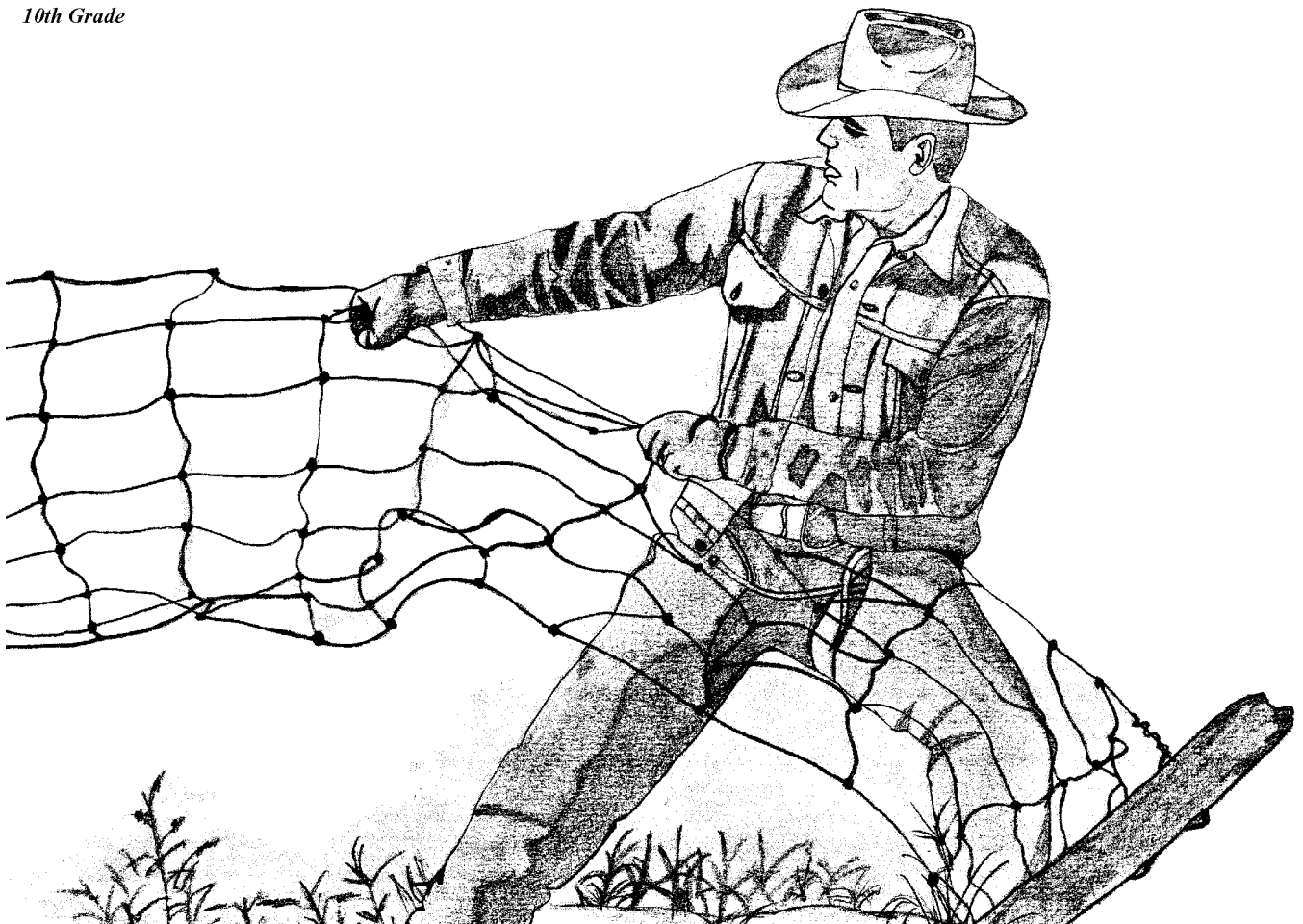

TEXAS REGISTER

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*Eduardo Carren
10th Grade*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
<http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site.
<http://www.state.tx.us/Government>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointment for June 7, 2005

Appointed as Texas Commissioner of Insurance for a term to expire February 1, 2007, Michael Scott Geeslin of Austin. Mr. Geeslin is replacing Jose Montemayor whose term expired.

Rick Perry, Governor

TRD-200502412



Executive Order

RP 43

Relating to the creation and maintenance of the Base Realignment and Closure Response Strike Force.

WHEREAS, the United States Department of Defense (DOD) has received approval from the U.S. Congress through the Base Realignment and Closure Act of 1990 (Pub. L. 101-510, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C. 2687) to recommend the closure or realignment of approximately twenty percent of all military installations throughout the United States through the formal Base Realignment and Closure process ("BRAC"); and

WHEREAS, the State of Texas has 18 major military installations supported by 45 active defense communities and a highly significant defense industry presence, all of which contribute approximately \$77 billion a year to the economy of the state; and

WHEREAS, the DOD announced on May 13, 2005, its recommendations for base realignment and closure actions; and

WHEREAS, with Texas installations included on the DOD's preliminary list of bases targeted for realignment or closure, Texas must engage in an aggressive and coordinated statewide effort to prevent the loss of these military bases and corresponding civilian jobs; and

WHEREAS, Texas must also be prepared to respond to the expansion of military bases and missions, increases or reductions in federal expenditures and the resulting job growth or losses to ensure Texas' long-term economic well-being;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as Governor and Chief Executive Officer, do hereby order the following:

Creation. The Base Realignment and Closure Response Strike Force ("Strike Force") shall be created and maintained.

Mission. The primary mission of the Strike Force shall be to identify and engage in efforts that may prevent the closure of Texas military installations. The Strike Force shall coordinate with impacted communities and perform the following:

(1) Review and analyze the data used by the Department of Defense to formulate closure and realignment proposals that impact Texas military installations;

(2) Seek revisions of the DOD recommendations to the Base Realignment and Closure Commission which negatively impact the state;

(3) Identify actions that can be taken by the state to alleviate concerns that caused the DOD to recommend closure or realignment;

(4) Identify actions to assist defense-dependent communities that have been negatively affected by BRAC 2005 by implementing necessary economic redevelopment initiatives; and

(5) Identify actions to assist defense-dependent communities that have been positively impacted by BRAC 2005 in order to accommodate new infrastructure and services requirements.

Designated representatives from each member agency, board or commission shall participate in called meetings to discuss actions required to assist defense communities and provide oral status reports to the Chair regarding actions taken.

Structure and Rules. The Strike Force shall consist of the heads of the following state agencies, boards, commissions, or their designees:

Adjutant General's Department;

Bond Review Board;

General Land Office;

Texas Office of State-Federal Relations;

Office of the Attorney General;

Public Utility Commission of Texas;

Texas Commission on Environmental Quality;

Texas Department of Information Resources;

Texas Department of Transportation;

Texas Education Agency;

Texas Historical Commission;

Texas Military Preparedness Commission;

Texas Public Finance Authority;

Texas Water Development Board; and

Texas Workforce Commission.

The Governor may appoint additional members of the Strike Force.

All members of the Strike Force shall serve at the pleasure of the Governor.

The Chair of the Strike Force shall be appointed by the Governor.

The Strike Force will be organized and its tasks determined by the Chair to accomplish stated Strike Force objectives.

Each state member organization will appoint a primary representative and an alternate to represent his or her agency and provide support on base realignment and closure related issues as required by the Chair.

Strike Force representatives may be organized into a team or teams to respond to specific BRAC data issues or requirements necessary to seek reconsideration of a DOD proposal in question.

The Strike Force, all or in part as specified by the Chair, will meet at the call of the Chair and may be disbanded at the discretion of the Governor.

All board or commission members serve without compensation except for reimbursement of pre-approved travel expenses. Approval and reimbursement must be made by the member's employing agency.

The Texas Military Preparedness Commission (TMPC) will provide routine staff support to the Strike Force.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 13th day of May, 2005.

Rick Perry, Governor

TRD-200502414

◆ ◆ ◆

Executive Order

RP 44

Relating to transition of functions from the Texas Workers' Compensation Commission to the Texas Department of Insurance.

WHEREAS, the 79th Texas Legislature passed House Bill No. 7 relating to the reform of the workers' compensation system in Texas, and as part of those reforms abolished the Texas Workers' Compensation Commission ("TWCC") and transferred certain identified functions to the Texas Department of Insurance ("TDI"); and

WHEREAS, House Bill No. 7 provided for the creation of the division of workers' compensation at the TDI to handle functions related to the operation of the workers' compensation system in Texas; and

WHEREAS, the division of workers' compensation is created effective September 1, 2005, and a commissioner of workers' compensation is to be named no later than October 1, 2005; and

WHEREAS, in order to provide for the complete transition of authority, property, staff, and operations to the division of workers' compensation within TDI no later than February 28, 2006; and

WHEREAS, House Bill No. 7 has been signed into law to be effective September 1, 2005;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as Governor and Chief Executive Officer do hereby order the following:

The TDI shall immediately begin coordinating with TWCC commissioners and executive management to effectuate an orderly transfer of functions, staff, property, and operations to the workers' compensation division at TDI.

The TDI commissioner, or his designee, shall provide resources, guidance, and direction in effectuating this transition effort.

The TWCC shall designate a point of contact for transition efforts.

TWCC commissioners, executive management, and staff shall immediately offer all due assistance and cooperation to the TDI commissioner, or his designee, to effectuate an efficient transition.

The TDI shall complete this transition no later than February 28, 2006, and shall present periodic status reports to the Office of the Governor and a final status report to the commissioner of the workers' compensation division upon his or her appointment, including recommendations for further action.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 9th day of June, 2005.

Rick Perry, Governor

TRD-200502413

◆ ◆ ◆

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Open Records Decision

ORD-682

Reagan E. Greer

Executive Director

Texas Lottery Commission

P.O. Box 16630

Austin, Texas 78761

Re: When requested public information is available on a governmental body's website, does the governmental body comply with the Public Information Act (the "PIA") by simply referring the requestor to the governmental body's website or does the PIA require the governmental body to make the requested information available in another way? (ORQ-66).

SUMMARY

A public information officer does not fulfill his or her duty under the Public Information Act by simply referring a requestor to a governmental body's website for requested public information. Section 552.221 of the Government Code requires the governmental body to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail. A requestor may, however, agree to accept information on a governmental body's website in fulfillment of the request and, in that situation, the governmental body must inform the requestor of the Internet address of the requested information.

For further information, please access the website at www.oag.state.tx.us. or call the Open Government Hotline at (512) 478-6736.

TRD-200502489

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: June 15, 2005



Request for Opinion

RQ-0348-GA

Requestor:

Ms. Sandy Smith, Executive Director

Texas Board of Professional Land Surveying

7701 North Lamar, Suite 400

Austin, Texas 78752

Re: Validity of platting requirements adopted by Cherokee County as they relate to professional land surveyors (RQ-0348-GA)

Briefs requested by July 13, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200502487

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: June 15, 2005



Opinions

Opinion No. GA-0328

The Honorable Dennis Bonnen

Chair, Committee on Environmental Regulation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a county sheriff may simultaneously serve as a member of the board of trustees of an independent school district located in that county (RQ-0298-GA)

SUMMARY

The Chambers County Sheriff may not simultaneously serve as a trustee of an independent school district located within an unincorporated area of the county in which the sheriff serves as the primary law enforcement official. Attorney General Opinions O-3308 (1941) and JM-519 (1986) are overruled to the extent of conflict.

Opinion No. GA-0329

Mr. Terry Julian

Executive Director

Texas Commission on Jail Standards

Post Office Box 12985

Austin, Texas 78711

Re: A sheriff's authority to deduct costs incurred for damage to jail property from the commissary account of a prisoner found to be liable for the damage (RQ-0300-GA)

S U M M A R Y

A sheriff has the authority to deduct costs incurred for damage to jail property from the commissary account of a prisoner that is found liable for the damage in an institutional due process hearing. However, the sheriff must first comply with the Texas Commission on Jail Standard's rules on disciplinary proceedings before taking such action.

Opinion No. GA-0330

Mr. Carl V. Reynolds

Administrative Director

Office of Court Administration

205 West 14th Street, Suite 600

Austin, Texas 78711-2066

Re Proper fee for filing a petition for an order of nondisclosure of certain criminal records regarding persons placed on deferred adjudication community supervision, and the authority of courts without general civil jurisdiction to entertain such a petition (RQ-0297-GA)

S U M M A R Y

Currently, a clerk may not condition the filing of a petition for an order of nondisclosure upon payment of a fee other than the \$28 fee expressly authorized by section 411.081(d) of the Government Code. The court that placed a person on deferred adjudication community supervision has jurisdiction to entertain the person's petition for nondisclosure under section 411.081(d).

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200502443

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: June 14, 2005

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 33. MULTIFAMILY HOUSING REVENUE BOND RULES

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of §§33.1 - 33.10, and proposes new §§33.1 - 33.10, concerning the Multifamily Housing Revenue Bond Rules. These sections are proposed new in order to implement changes that will effectively improve the 2006 Private Activity Bond Program.

Edwina P. Carrington, Executive Director, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Carrington also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to permit the adoption of new rules for multifamily housing revenue bonds within the State of Texas, thereby enhancing the State's ability to provide decent, safe and sanitary housing for Texans through the multifamily housing revenue bond program administered by the Department. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to any person, business or micro-business required to comply with the sections as proposed. The proposed sections will not have an impact on any local economy.

The Department will conduct a public hearing in Austin on July 6, 2005 to receive comments and suggestions from the public concerning these proposed Rules.

Comments may be submitted to Robbye Meyer, Manager of Multifamily Finance, Texas Department of Housing and Community Affairs, P O Box 13941, Austin, Texas 78711-3941 or email at robbye.meyer@tdhca.state.tx.us no later than 5:00 p.m., July 18, 2005.

10 TAC §§33.1 - 33.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The repeals affect no other code, article or statute.

§33.1. *Introduction.*

§33.2. *Authority.*

§33.3. *Definitions.*

§33.4. *Policy Objectives and Eligible Housing Developments.*

§33.5. *Bond Rating and Investment Letter.*

§33.6. *Application Procedures, Evaluation and Approval.*

§33.7. *Regulatory and Land Use Restrictions.*

§33.8. *Fees.*

§33.9. *Waiver of Rules.*

§33.10. *No Discrimination.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2005.

TRD-200502379

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 475-4595

10 TAC §§33.1 - 33.10

The proposed new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The proposed new sections affect no other code, article or statute.

§33.1. *Introduction.*

The purpose of this Chapter 33 is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2006 Private Activity Bond Program Year. The rules and provisions contained in Chapter 33, of this title are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan and Rules ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in the chapter.

§33.2. *Authority.*

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code (the "Act"). All Bonds issued by the Department must conform to the requirements of the Act. Notwithstanding anything herein to the contrary, tax-exempt Bonds which are

issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to the Act, Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this chapter).

§33.3. Definitions.

The following words and terms, when used in the chapter, shall have the following meaning, unless context clearly indicates otherwise.

(1) Applicant--any Person or Affiliate of a Person who is a member of the General Partner, who files a Pre-Application or full Application with the Department requesting the Department issue Bonds to finance a Development.

(2) Application--an Application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material.

(3) Board--the Governing Board of the Department.

(4) Bond--an evidence of indebtedness or other obligation, regardless of the sources of payment, issued by the Department under the Act, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable, or nonnegotiable, in bearer or registered form, in certified or book entry form, in temporary or permanent form, or with or without interest coupons.

(5) Code--the Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued by the United States Department of the Treasury or the Internal Revenue Service.

(6) Development--property or work or a development, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the Department for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, or use by individuals and families of Low Income and Very Low Income and Families of Moderate Income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewage facilities, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community, and recreational facilities the Department determines to be necessary, convenient, or desirable appurtenances; and

(B) multifamily dwellings in rural and urban areas.

(7) Development Owner--an Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(8) Eligible Tenants--means

(A) individuals and families of Extremely Low, Very Low and Low Income,

(B) Families of Moderate Income (in each case in the foregoing subparagraph (A) and (B) of this paragraph as such terms are defined by the Issuer under the Act), and

(C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

(9) Extremely Low Income--the income received by an individual or family whose income does not exceed thirty percent (30%) of the area median income or applicable federal poverty line, as determined by the Act.

(10) Family of Moderate Income--a family:

(A) that is determined by the Board to require assistance taking into account

(i) the amount of total income available for the housing needs of the individuals and family,

(ii) the size of the family,

(iii) the cost and condition of available housing facilities,

(iv) the ability of the individuals and family to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing, and

(v) standards established for various federal programs determining eligibility based on income; and

(B) that does not qualify as a family of Low Income.

(11) Ineligible Building Type--as defined in the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted.

(12) Institutional Buyer--means

(A) an accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)) or

(B) a qualified institutional buyer as defined by Rule 144A promulgated under the Securities Act of 1935, as amended (17 CFR §230.144A).

(13) Low Income--the income received by an individual or family whose income does not exceed eighty percent (80%) of the area median income or applicable federal poverty line, as determined by the Act.

(14) Land Use Restriction Agreement (LURA)--an agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest that encumbers the Development with respect to the requirements of law, including this title, the Act and §42 of the Code.

(15) Owner--an Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(16) Persons with Special Needs--persons who

(A) are considered to be disabled under a state or federal law,

(B) are elderly, meaning 60 years of age or older or of an age specified by an applicable federal program,

(C) are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or

(D) are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph above and meet the income guidelines established by the Board.

(17) Private Activity Bonds--any Bonds described by §141(a) of the Code.

(18) Private Activity Bond Program Scoring Criteria--the scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(d) of this title.

(19) Private Activity Bond Program Threshold Requirements--the threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(c) of this title.

(20) Program--the Department's Multifamily Housing Revenue Bond Program.

(21) Proper Site Control--Regarding the legal control of the land to be used for the Development, means the earnest money contract is in the name of the Applicant (principal or member of the General Partner); fully executed by all parties and escrowed by the title company.

(22) Property--the real estate and all improvements thereon, whether currently existing or proposed to be built thereon in connection with the Development, and including all items of personal property affixed or related thereto.

(23) Qualified 501(c)(3) Bonds--any Bonds described by §145(a) of the Code.

(24) Tenant Income Certification--a certification as to income and other matters executed by the household members of each tenant in the Development, in such form as reasonably may be required by the Department in satisfaction of the criteria prescribed by the Secretary of Housing and Urban Development under §8(f)(3) of the Housing Act of 1937 ("the Housing Act") (42 U.S.C. 1437f) for purposes of determining whether a family is a lower income family within the meaning of the §8(f)(1) of the Housing Act.

(25) Tenant Services--social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §601 et seq.), and other similar services.

(26) Tenant Services Program Plan--the plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.

(27) Trustee--a national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

(28) Unit--any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(29) Very Low Income--the income received by an individual or family whose income does not exceed sixty percent (60%) of the area median income or applicable federal poverty line as determined under the Act.

§33.4. Policy Objectives and Eligible Developments.

The Department will issue Bonds to finance the preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income.

§33.5. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, which approval shall be evidenced by adoption by the Board of a resolution authorizing the issuance of the credit-enhanced Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.

(b) Investment Letters. Bonds rated less than "A," or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investment letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall sign and deliver to the Department an investment letter in a form acceptable to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investment letter in a form acceptable to the Department.

§33.6. Application Procedures, Evaluation and Approval.

(a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in a format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department, the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (d) of this section. The Department will score and rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with

Section 2306.359. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (c) of this section. The Private Activity Bond Program Threshold Requirements will be posted on the Department's website. After scoring, the Development and the proposed financing structure will be presented to the Department's Board for consideration of a resolution declaring the Department's intent to issue Bonds (the "inducement resolution") with respect to the Development. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. After Board approval of the inducement resolution, the scored and ranked Applications will be submitted to the Texas Bond Review Board for its lottery, waiting list or carryforward processing. The Texas Bond Review Board will draw the number of lottery numbers that equates to the number of eligible Applications submitted by the Department for participation in lottery. The lottery numbers drawn will not equate to a specific Development. The Texas Bond Review Board will thereafter assign the lowest lottery number drawn to the highest scored and ranked Application as previously determined by the Department. The Texas Bond Review Board will issue reservations of allocation for Applications submitted for the waiting list or carryforward in the order determined by the Department. The criteria by which a Development may be deemed to be eligible or ineligible are explained below in subsection (g) of this section, entitled Evaluation Criteria. The Private Activity Bond Program Scoring Criteria will be posted on the Department's website. The pre-application shall consist of the following information:

- (1) Completed Current Uniform Application forms in the format required by the Department;
- (2) Texas Bond Review Board's Residential Rental Attachment;
- (3) Relevant Development Information;
- (4) Certification of Local Elected Official request for neighborhood organization information and Public Notification Information;
- (5) Certification and agreement to comply with the Department's rules;
- (6) Agreement of responsibility of all cost incurred;
- (7) An organizational chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant;
- (8) Evidence that the Applicant and principals are registered with the Texas Secretary of State, or if the Applicant has not yet been formed, evidence that the name of the Applicant is reserved with the Secretary of State;
- (9) Organizational documents such as partnership agreements and articles of incorporation, as applicable, for the Applicant and its principals;
- (10) Documentation of non-profit status if applicable; Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals; Corporate resumes and individual resumes of the Applicant and any principals;

(11) A copy of an executed earnest money contract between the Applicant and the seller of the Property. For all Applications submitted the earnest money contract must be in effect at the time of submission of the application and expire no earlier than December 1 of the year preceding the applicable program year for lottery Applications and expire no earlier than 120 days after the date of submission for waiting list and carryforward Applications. The earnest money contract must stipulate and provide for the Applicant's option to extend the contract expiration date through March 1 of the program year for lottery Applications or option to extend an additional 120 days from the initial expiration for waiting list and carryforward Applications, subject only to the seller's receipt of additional earnest money or extension fees, so that the Applicant will have site control at the time a reservation of allocation is granted. If the Applicant owns the Property, a copy of the recorded warranty deed is required;

(12) Evidence of zoning appropriate for the proposed use, application for the appropriate zoning or statement that no zoning is required;

(13) A local map showing the location of the proposed Property site;

(14) A boundary survey or subdivision plat which clearly identifies the location and boundaries of the subject Property;

(15) Name, address and telephone number of the Seller of the Property;

(16) Construction draw and lease-up proforma for Developments involving new construction;

(17) Past two years' operating statements for existing Developments;

(18) Current market information which includes rental comparisons;

(19) Documentation of local Section 8 utility allowances;

(20) Verification/Evidence of delivery of federal, state, and local community notifications;

(21) Self-Scoring Criteria; and

(22) Such other items deemed necessary by the Department per individual application.

(c) Pre-Application Threshold Requirements.

(1) As the Department reviews the Application, the Department will use the following assumptions, even if not reflected in the Application. Prequalification Assumptions:

(A) Development Feasibility:

(i) Debt Coverage Ratio must be greater than or equal to 1.10;

(ii) Annual Expenses must be at least \$3,800 per Unit or \$3.75 per square foot;

(iii) Deferred Developer Fees are limited to 80% of Developer's Fees;

(iv) Contractor Fee are limited to 6% of direct costs plus site work cost;

(v) Overhead are limited to 2% of direct costs plus site work cost;

(vi) General Requirements are limited to 6% of direct costs plus site work cost;

(vii) Developer Fees cannot exceed 15% of the project's Total Eligible Basis

(B) Construction Costs Per Unit Assumption. The acceptable range is \$55 65 per Unit for general population developments and \$55 to \$75 for elderly developments (Acquisition/Rehab developments are exempt from this requirement);

(C) Interest Rate Assumption. 6.00% for 30 year financing and 6.75% for 40 year financing;

(D) Size of Units (Acquisition/Rehab developments are exempt from this requirement);

(i) One bedroom Unit must be greater than or equal to 650 square feet for family and 550 square feet for senior Units.

(ii) Two bedroom Unit must be greater than or equal to 900 square feet for family and 750 square feet for senior Units.

(iii) Three bedroom Unit must be greater than or equal to 1,000 square feet for family.

(2) Appropriate Zoning. Evidence of appropriate zoning for the proposed use or evidence of application made and pending decision;

(3) Executed Site Control. Properly executed and escrow receipted site control through 12/1/05 with option to extend through 3/1/06 for lottery Applications or 120 days from date of Application submission with option to extend an additional 120 days from the initial expiration for waiting list and carryforward Applications;

(4) Previous Participation and Authorization to Release Credit Information (located in the uniform application);

(5) Current Market Information (must support affordable rents);

(6) Completed current TDHCA Uniform Application and application exhibits;

(7) Completed Multifamily Rental Worksheets;

(8) Certification of Local Elected Official request for neighborhood organization information and Public Notification Information (see application package);

(9) Relevant Development Information (see application package);

(10) Completed 2006 Bond Review Board Residential Rental Attachment;

(11) Signed letter of Responsibility for All Costs Incurred;

(12) Signed Mortgage Revenue Bond Program Certification Letter;

(13) Evidence of Paid Application Fees (\$1,000 to TDHCA, \$1,500 to Vinson and Elkins and \$5,000 to Bond Review Board);

(14) Boundary Survey or Plat;

(15) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius;

(16) Utility Allowance from the Appropriate Local Housing Authority;

(17) Organization Chart with evidence of Entity Registration or Reservation with the Secretary of State; and

(18) Required Notification. Evidence of notifications shall include a copy of the exact letter and other materials that were sent to the individual or entity, a sworn affidavit stating that they made

all the required notifications prior to the deadlines and a copy of the entire mailing list (including names and complete addresses) of all the recipients. Proof of notification must not be older than three months prior to the date of Application submission date. Notification must be sent to all the following individuals and entities (If the QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed below, then the QAP and Rules will override the notification process listed below):

(A) State Senator and Representative that represents the community containing the development;

(B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);

(C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);

(D) School District Superintendent of the school district containing the development;

(E) Presiding Officer of the School Board of Trustees of the school district containing the development; and

(F) Evidence must be provided that a letter requesting information on neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site and meeting the requirements of "Local Elected Official Notification" as outlined in the Application was sent no later than twenty-one (21) days prior to the Application submission to the local elected official for the city or if located outside of a city, then the county where the Development is proposed to be located. If the Development is located in a jurisdiction that has district based local elected officials, or both at-large and district based local elected officials, the notification must be made to the city council member or county commissioner representing that district; if the Development is located in a jurisdiction that has only at-large local elected official, the notification must be made to the mayor or county judge for the jurisdiction. A copy of the reply letter or other official third-party documentation from the local elected official must be provided. For urban/exurban areas, entities identified in the letters from the local elected official whose listed address has the same zip code as the zip code for the Development must be provided with written notification, and evidence of the notification must be provided. If any other zip codes exist within a half mile of the Development site, then all entities identified in the letters with adjacent zip codes must also be provided with written notification, and evidence of that notification must be provided. For rural areas, all entities identified in the letters whose listed address is within a half mile of the proposed Development site must be provided with written notification, and evidence of that notification must be provided. If no response is received from the local elected official by seven (7) days prior to Application submission then the Applicant must submit a statement attesting to that fact in the format provided by the Department as part of the Application.

(d) Pre-Application Scoring Criteria.

(1) Construction Cost Per Unit includes: site work, contractor profit, overhead, general requirements and contingency. Calculation will be hard costs per square foot of net rentable area. Must be greater than or equal to \$60 per square foot (1 point) (Acquisition/Rehab will automatically receive (1 point)).

(2) Size of Units. Average size of all Units combined in the development must be greater than or equal to 950 square foot for family and must be greater than or equal to 750 square foot for elderly (5

points). (Acquisition/Rehab developments will automatically receive 5 points).

(3) Period of Guaranteed Affordability for Low Income Tenants. Add 10 years of affordability after the extended use period for a total affordability period of 40 years (1 point).

(4) Quality and Amenities ((maximum 35 points) Acquisition/Rehab (with no demolition/new construction) will receive double points not to exceed 35 points)). (If there are changes to the Application prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Substitutions in amenities will be allowed as long as the overall score is not affected). Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows:

- (A) Laundry Connections (2 points);
- (B) Self-cleaning or continuous cleaning ovens (1 point);
- (C) Microwave Ovens (in each Unit) (1 point);
- (D) Refrigerator with icemaker (1 point);
- (E) Laundry equipment (washer and dryers) for each Unit (3 points);
- (F) Storage Room of approximately nine (9) square feet or greater (does not have to be in the unit but must be on the property) (1 point);
- (G) Covered entries (1 point);
- (H) Nine foot ceilings (1 point);
- (I) Covered patios or covered balconies (1 point);
- (J) Covered Parking (at least one per Unit) (3 points);
- (K) Garages (equal to at least 35% of Units) (5 points);
- (L) Ceiling Fans in all rooms except bathrooms and kitchens (light with ceiling fan in all bedrooms) (1 point);
- (M) 75% or Greater Masonry (includes rock, stone, brick, stucco and cementious board product; excludes EFIS) (5 points);
- (N) Thirty year architectural shingle roofing (1 point);
- (O) Use of energy efficient alternative construction materials (structurally insulated panels) with wall insulation at a minimum of R-20 (3 points);
- (P) R-15 Walls/R-30 Ceilings (rating of wall system) (3 points);
- (Q) 14 SEER HVAC or evaporative coolers in dry climates for new construction or radiant barrier in the attic for the rehabilitation (3 points);
- (R) Energy Star or equivalently rated kitchen appliances (2 points);
- (S) Playground and Equipment or Covered Community Porch (3 points);
- (T) BBQ Grills and Tables (one each per 50 Units) or Walking Trail (minimum length of 1/4 mile) (3 points);

(U) Full Perimeter Fencing with controlled gate access (3 points);

(V) Computers with internet access/Business Facilities (8 hour availability) (2 points);

(W) Game Room or TV Lounge (2 points);

(X) Furnished and staffed children's activity center (3 points);

(Y) Horseshoe pit, putting green or shuffleboard court (only qualified elderly developments) (2 points);

(Z) Workout Facilities or Library (with comparable square footage as workout facilities) (2 points).

(5) Tenant Services (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included).

(A) \$10.00 per Unit per month (10 points);

(B) \$7.00 per Unit per month (5 points);

(C) \$4.00 per Unit per month (3 points).

(6) Zoning appropriate for the proposed use or no zoning required (appropriate zoning for the intended use must be in place at the time of application submission date, September 6, 2005 (Applications submitted for lottery) or first Monday of each month (Applications submitted for waiting list and carryforward), in order to receive points) (5 points).

(7) Proper Site Control (as defined in §33.3(21) of this title, control through 12/01/05 with option to extend through 03/01/06 (Applications submitted for lottery) or 120 days after the applicable submission date with option to extend an additional 120 days after the initial expiration (Applications submitted for waiting list and carryforward) (all information must be correct at the time of the Application submission date, September 6, 2005 (Applications submitted for lottery) or first Monday of each month (Applications submitted for waiting list or carryforward), in order to receive points) (5 points).

(8) Development Support/Opposition (Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, October 7, 2005 (Applications submitted for lottery) or fourteen (14) days prior to the date of the Board meeting at which the Application will be considered (Applications submitted for waiting list and carryforward) will be used in scoring).

(A) Texas State Senator and Texas State Representative (maximum +6 to -6 points);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +6 to -6 points);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +6 to -6 points);

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +6 to -6 points).

(9) Penalties for Missed Deadlines in the Previous Year's Bond and/or Tax Credit program year. (This includes approved and used extensions) (-1 point with maximum 3 point deduction).

(10) Local Political Subdivision Development Funding Commitment that enables additional Units for the Very Low Income (CDBG, HOME or other funds through local political subdivisions) (must be greater than or equal to 2% of the bond amount requested and must provide at least 5% of the total Development Units at or below 30% AMFI or an additional 5% of the total Development Units if the Applicant has chosen category Priority 1B on the residential rental attachment) (2 points).

(11) Proximity to Community Services/Amenities (Community services/amenities within three (3) miles of the site. A map must be included with the Application showing a three (3) mile radius notating where the services/amenities are located) (maximum 12 points)

- (A) Full service grocery store or supermarket (1 point);
- (B) Pharmacy (1 point);
- (C) Convenience store/mini-market (1 point);
- (D) Retail Facilities (Target, Wal-Mart, Home Depot, etc.) (1 point);
- (E) Bank/Financial Institution (1 point);
- (F) Restaurant (1 point);
- (G) Indoor public recreation facilities (community center, civic center, YMCA) (1 point);
- (H) Outdoor public recreation facilities (park, golf course, public swimming pool) (1 point)
- (I) Fire/Police Station (1 point);
- (J) Medical Facilities (hospitals, minor emergency, doctor or dentist offices) (1 point);
- (K) Public Library (1 point);
- (L) Public Transportation (1/2 mile from site) (1 point);
- (M) Public School (only one school required for point and only eligible with general population developments) (1 point) .

(12) Proximity to Negative Features (adjacent to or within 300 feet of any part of the Development site boundaries). A map must be included with the application showing where the feature is located. Developer must provide a letter stating there are none of the negative features listed below within the stated area if that is correct. (maximum -20 points)

- (A) Junkyards (5 points);
- (B) Active Railways (excluding light rail) (5 points);
- (C) Heavy industrial/manufacturing plants (5 points);
- (D) Solid Waste/Sanitary Landfills (5 points);
- (E) High Voltage Transmission Towers (5 points).

(13) Acquisition/Rehabilitation Developments will receive thirty (30) points. This will include the demolition of old buildings and new construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).

(14) Preservation Developments will receive ten (10) points. This includes rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past ten years. Evidence must be provided.

(e) Financing Commitments. After approval by the Board of the inducement resolution, and before submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(f) Final Application. An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application prior to receipt of a reservation of allocation from the Texas Bond Review Board and the Volumes III and VI of the Application and such supporting material as is required by the Department at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. The final application must adhere to the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in paragraphs (1) - (42) of this subsection shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board. The final application and supporting material shall consist of the following information:

(1) A Public Notification Sign shall be installed on the proposed Development site no later than thirty (30) days after the submission of Volume I and II of the Tax Credit Application to the Department (pictures and invoice receipts must be submitted as evidence of installation within thirty (30) days of the submission). The sign must be at least four (4) feet by eight (8) feet in size and be located within twenty (20) feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA Board takes final action on the Application for the development. The information and lettering on the sign must meet the requirements identified in the Application. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's Option, mail written notification to all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning ordinance or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the 1,000 foot or local ordinance area showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. The Applicant must mail notice to any public official that changed from the submission of the pre-application to the submission of the final application and any neighborhood organization that is known and was not notified at the time of the pre-application submission. No additional notification is required unless the Applicant submitted a change in the Application that reflects a total Unit increase greater than 10%, an increase greater than 10% for any given AMFI, or a change in the population being served (elderly, general population or transitional);

(2) Completed Uniform Application forms in the format required by the Department;

(3) Certification of no changes from the pre-application to the final application. If there are changes to the Application that have

an adverse affect on the score and ranking order and that would have resulted in the application being placed below another application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points);

(4) Certification and agreement to comply with the Department's rules;

(5) A narrative description of the Development;

(6) A narrative description of the proposed financing;

(7) Firm letters of commitment from any lenders, credit providers, and equity providers involved in the transaction;

(8) Documentation of local Section 8 utility allowances;

(9) Site plan;

(10) Unit and building floor plans and elevations;

(11) Complete construction plans and specifications;

(12) General contractor's contract;

(13) Completion schedule;

(14) Copy of a recorded warranty deed if the Applicant already owns the Property, or a copy of an executed earnest money contract between the Applicant and the seller of the Property if the Property is to be purchased;

(15) A local map showing the location of the Property;

(16) Photographs of the Site;

(17) Survey with legal description;

(18) Flood plain map;

(19) Evidence of zoning appropriate for the proposed use from the appropriate local municipality that satisfies one of these subparagraphs (A) - (C) of this paragraph:

(A) no later than fourteen (14) days before the Board meets to consider the transaction, the Applicant must submit to the Department written evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that they will recommend approval of the appropriate zoning to the entity responsible for final approval of zoning decisions;

(B) provide a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance;

(C) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating the Development is permitted under the provision of the zoning ordinance that apply to the location of the Development or that there is not a zoning requirement.

(20) Evidence of the availability of utilities;

(21) Copies of any deed restrictions which may encumber the Property;

(22) A Phase I Environmental Site Assessment performed in accordance with the Department's Environmental Site Assessment Rules and Guidelines (§1.35 of this title);

(23) Title search or title commitment;

(24) Current tax assessor's valuation or tax bill;

(25) For existing Developments, current insurance bills;

(26) For existing Developments, past two (2) fiscal year end development operating statements;

(27) For existing Developments, current rent rolls;

(28) For existing Developments, substantiation that income-based tenancy requirements will be met prior to closing;

(29) A market study performed in accordance with the Department's Market Analysis Rules and Guidelines (§1.33 of this title);

(30) Appraisal of the existing or proposed Development performed in accordance with the Department's Underwriting Rules and Guidelines (§1.32 of this title);

(31) Statement that the Development Owner will accept tenants with Section 8 or other government housing assistance;

(32) An organizational chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant;

(33) Evidence that the Applicant and principals are registered with the Texas Secretary of State, as applicable;

(34) Organizational documents such as partnership agreements and articles of incorporation, as applicable, for the Applicant and its principals;

(35) Documentation of non-profit status if applicable;

(36) Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals;

(37) Corporate resumes and individual resumes of the Applicant and any principals;

(38) Latest two (2) annual financial statements and current interim financial statement for the Applicant and its principals;

(39) Latest income tax filings for the Applicant and its principals;

(40) Resolutions or other documentation indicating that the transaction has been approved by the general partner;

(41) Resumes of the general contractor's and the property manager's experience; and

(42) Such other items deemed necessary by the Department per individual application.

(g) Evaluation Criteria. The Department will evaluate the Development for eligibility at the time of pre-application, and at the time of final Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition point). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) - (6) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Act.

(2) The proposed Development and the Applicant and its principals must satisfy the Department's Underwriting Rules and Guidelines (§1.32 of this title). The pre-application must include sufficient information for the Department to establish that the Underwriting Guidelines can be satisfied. The final Application will

be thoroughly underwritten according to the Underwriting Rules and Guidelines (§1.32 of this title).

(3) The Development must not be located on a site determined to be unacceptable for the intended use by the Department.

(4) Any Development in which the Applicant or principals of the Applicant have an ownership interest must be found not to be in Material Non-Compliance under the compliance Rules in effect at the time of pre-application submission. Any corrective action documentation affecting the Material Non-compliance status score must be submitted to the Department no later than thirty (30) days prior to final application submission.

(5) Neither the Applicant nor any principals of the Applicant is, at the time of Application:

(A) barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or

(B) has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation, misappropriation of funds, or other similar criminal offenses within fifteen (15) years; or

(C) is subject to enforcement action under state or federal securities law, action by the NASD, subject to a federal tax lien, or the subject of an enforcement proceeding with any governmental entity; or

(D) neither applicant nor any principals of the applicant have a development under their ownership or control with a Material Non-compliance score of 30 or more; or

(E) otherwise disqualified or debarred from participation in any of the Department's programs.

(6) Neither the Applicant nor any of its principals may have provided any fraudulent information, knowingly false documentation or other intentional or negligent misrepresentation in the Application or other information submitted to the Department.

(h) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(i) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §2306.0661, Texas Government Code and §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

- (1) The Development Owner market study;
- (2) The location, including supporting broad geographic dispersion;
- (3) The compliance history of the Development Owner;
- (4) The financial feasibility;
- (5) The inclusive capture rate as described under Chapter 10, Texas Administrative Code, §1.32(g)(2);

(6) The Development's proposed size and configuration in relation to the housing needs of the community in which the Development is located;

(7) The Development's proximity to other low income Developments;

(8) The availability of adequate public facilities and services;

(9) The anticipated impact on local school districts, giving due consideration to the authorized land use;

(10) Zoning and other land use considerations;

(11) Fair Housing law, including affirmatively furthering fair housing;

(12) The Applicant and/or Developer's efforts to engage the neighborhood;

(13) The housing needs of the community, area, region and state;

(14) Consistency with local needs, including consideration of revitalization or preservation needs;

(15) Providing integrated, affordable housing for individuals and families with different levels of income;

(16) Meeting a compelling housing need;

(17) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes and the policies of Chapter 2306, Texas Government Code.

(j) Approval of the Bonds.

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and, in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 and §1.8 of this title. The Department's conduit housing transactions will be processed in accordance with the Texas Bond Review Board rules Title 34, Part 9, Chapter 181, Subchapter A and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. In accordance with § 2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator (fax: (512) 475-3978). For additional information on the

Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.

(k) Local Permits. Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

(l) Closing. Once all approvals have been obtained and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§33.7. Regulatory and Land Use Restrictions.

(a) Filing and Term of LURA. A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. For Developments involving new construction, the term of the LURA will be the longer of 30 years, the period of guaranteed affordability or the period for which Bonds are outstanding. For the financing of an existing Development, the term of the LURA will be the longer of the longest period which is economically feasible in accordance with the Act, or the period for which Bonds are outstanding.

(b) Development Occupancy. The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner of the Development. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.

(c) Set Asides.

(1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds must be restricted under one of the following two set-asides:

(A) at least twenty percent (20%) of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed fifty percent (50%) of the area median income, or

(B) at least forty percent (40%) of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed sixty percent (60%) of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that, should a tenant's income, as of the most recent determination thereof, exceed 140% of the then applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant. (These are the federal set-aside requirements)

(d) Global Income Requirement. All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds shall be occupied or held vacant (in the case of new construction) and available for occupancy at all times by persons or families whose income does not exceed one hundred and forty percent (140%) of the area median income for a four-person household.

(e) Qualified 501(c)(3) Bonds. Developments which are financed from the proceeds of Qualified 501(c)(3) Bonds are further subject to the restriction that at least seventy-five percent (75%) of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).

(f) Taxable Bonds. The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.

(g) Special Needs. At least five percent (5%) of the Units within each Development must be designed to be accessible to Persons with Special Needs and hardware and cabinetry must be stored on site or provided to be installed on an as needed basis in such Units. The Development will comply with accessibility requirements in the Fair Housing Act Design manual. The Development Owner will use its best efforts (including giving preference to Persons with Special Needs) to:

(1) make at least five percent (5%) of the Units within the Development available for occupancy by Persons with Special Needs;

(2) make reasonable accommodations for such persons; and

(3) allow reasonable modifications at the tenant's sole expense pursuant to the Housing Act. During the term of the LURA, the Development Owner shall maintain written policies regarding the Development Owner's outreach and marketing program to Persons with Special Needs.

(h) Fair Housing. All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

(i) Tenant Services. The LURA will require that the Development Owner offer a variety of services for residents of the Development through a Tenant Services Program Plan which is subject to annual approval by the Department.

(j) The LURA will require the Development Owner:

(1) To obtain, complete and maintain on file Tenant Income Certifications from each Eligible Tenant, including:

(A) a Tenant Income Certification dated immediately prior to the initial occupancy of each new Eligible Tenant in the Development; and

(B) thereafter, annual Tenant Income Certifications which must be obtained on or before the anniversary of such Eligible Tenant's occupancy of the Unit, and in no event less than once in every 12-month period following each Eligible Tenant's occupancy of a Unit in the Development. For administrative convenience, the Development Owner may establish the first date that a Tenant Income Certification for the Development is received as the annual recertification date for all tenants. The Development Owner will obtain such additional information as may be required in the future by §142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations which are tax-exempt private activity bonds described in §142(d) of the Code. The Development Owner shall make a diligent and good-faith effort to determine that the income information provided by an applicant in a Tenant Income Certification is accurate by taking steps required under §142(d) of the Code pursuant to provisions of the Housing Act.

(C) The Development shall comply with Title 10, Part 1, Chapter 60, Subchapter A.

(2) As part of the verification, such steps may include the following, provided such action meets the requirements of §142(d) of the Code and the gross income of individuals shall be determined in a manner consistent with the determinations of low income families under section 8 of the United States Housing Act of 1937:

(A) obtain pay stubs sufficient to annualize income;

(B) obtain third party written verification of income;

(C) obtain an income verification from the applicant's current employer;

(D) obtain an income verification from the Social Security Administration; or

(E) if the applicant is self-employed, unemployed, does not have income tax returns or is otherwise not reasonably able to provide other forms of verification as required above, obtain another form of independent verification as would, in the Development Owner's reasonable commercial judgment, enable the Development Owner to determine the accuracy of the applicant's income information. The Development Owner shall retain all Tenant Income Certifications obtained in compliance with this subsection (b) of this section until the date that is six years after the last Bond is retired.

(3) To obtain from each tenant in the Development, at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form as provided by the Department to the Development Owner from time to time that

(A) such lease is subordinate to the Mortgage and the LURA;

(B) all statements made in the Tenant Income Certification submitted by such tenant are accurate;

(C) the family income and eligibility requirements of the LURA and the Loan Agreement are substantial and material obligations of tenancy in the Development;

(D) such tenant will comply promptly with all requests for information with respect to such requirements from the Development Owner, the Trustee and the Department; and

(E) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Development;

(4) To maintain complete and accurate records pertaining to the Low-Income Units and to permit, at all reasonable times during normal business hours and upon reasonable notice, any duly authorized representative of the Department, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site to examine and inspect the Development and to inspect the books and records of the Development Owner pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units;

(5) On or before each February 15 during the qualified development period, to submit to the Department (to the attention of the Portfolio Management and Compliance Division) a draft of the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Development continues to meet the requirements of §142(d) of the Code and on or before each March 31 during the qualified development period, to submit such completed form to the Secretary of the Treasury and the Department;

(6) To prepare and submit the compliance monitoring report. To cause to be prepared and submitted to the Department and the Trustee on the first day of the state restrictive period, and thereafter by the tenth calendar day of each March, June, September, and December, or other quarterly schedule as determined by the Department with written notice to the Development Owner, a certified compliance monitoring report and Development Owner's certification in such form as provided by the Departments to the Development Owner from time to time; and

(7) To provide regular maintenance to keep the Development sanitary, decent and safe.

(8) To establish a reserve account consistent with the requirements of §2306.186, Texas Government Code.

(9) To prepare and submit the Housing Sponsor Report to the Department no later than March 1st of each year.

§33.8. Fees.

(a) Application and Issuance Fees. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code)

(b) Administration, Portfolio Management and Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with

the program requirements applicable to each Development and asset management applicable requirements.

§33.9. Waiver of Rules.

Provided all requirements of the Act, the Code, and any other applicable law are met, the Board may waive any one or more of the Rules set forth in §§33.3 - 33.8 of this title relating to the Multifamily Housing Revenue Bond Program in order to further the purposes and the policies of Chapter 2306, Texas Government Code; to encourage the acquisition, construction, reconstruction, or rehabilitation of a Development that would provide decent, safe, and sanitary housing, including, but not limited to, providing such housing in economically depressed or blighted areas, or providing housing designed and equipped for Persons with Special Needs; or for other good cause, as determined by the Board.

§33.10. No Discrimination.

The Department and its staff or agents, Applicants, Development Owners, and any participants in the Program shall not discriminate under this Program against any person or family on the basis of race, creed, national origin, age, religion, handicap, family status, or sex, or against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Development Owner from selecting tenants with Special Needs, or to preclude a Development Owner from selecting tenants based on income in renting Units to comply with the set asides under the provisions of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2005.

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Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 475-4595



PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.3

The Texas Residential Construction Commission ("commission") proposes new §301.3, relating to a Warranties and Performance Standards Advisory Committee. The new section sets forth the purpose and membership requirements for an advisory committee to be appointed by the commission to assist in the review and development of amendments to the Limited Warranties and Building and Performance Standards adopted in Chapter 304 of this title.

The new section is proposed to provide a mechanism that allows for regular and reasoned review of the residential construction performance standards adopted by the commission. The committee shall review and evaluate proposed changes to the performance standards made either by the public or internally by the commission, and make recommendations to the commission.

The new section is proposed under Property Code §408.001, which provides general authority for the commission to adopt

rules necessary for the implementation of Title 16 and Chapter 430, which requires the commission to adopt rules for establishing limited warranties and building and performance standards. The new section is also adopted in accordance with Texas Government Code Chapter 2110, regarding agency advisory committees.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for local governments as a result of enforcing or administering the proposed section.

Mr. Thomas has also determined that for each year of the first five-year period the proposed section are in effect the public will benefit from receiving assurance that the commission will regularly review proposed amendments to Chapter 304 of this title and that the commission will have a procedure in place for the public and other interested stakeholders to provide input into the limited warranties and building and performance standards.

Mr. Thomas has also determined that for each year of the first five-year period the proposed section is in effect there will be no effect on large, small and micro-businesses as a result of the adoption of the proposed section.

Mr. Thomas has also determined that for each year of the first five-year period the proposed section are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the new section to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Proposed Advisory Committee Rule" in the subject line. The deadline for submission of comments is thirty days from the date of publication of the proposed section in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments submitted electronically to another electronic address or that do not include "Proposed Advisory Committee Rule" in the subject line may not be considered.

The new section is proposed to implement Property Code Chapter 430 and Government Code Chapter 2110.

No other statutes, articles, or codes are affected by the proposal.

§301.3. Warranties and Performance Standards Advisory Committee.

(a) The commission shall appoint an advisory committee to be referred to as the Warranties and Performance Standards Advisory Committee.

(b) The purpose of the committee is to provide a mechanism that allows for regular and reasoned review of the residential construction performance standards adopted by the commission. The committee shall review and evaluate proposed changes to the performance standards made either by the public or internally by the commission, and make recommendations to the commission.

(c) The commission shall contract with the Construction Science Department, College of Architecture, Texas A&M University, for an individual to serve as presiding officer for the committee. This position shall be non-voting except in the case of a tie.

(d) The Executive Director shall appoint a member of the commission staff to serve and assist the committee. This position shall

be non-voting. This person shall keep minutes of committee meetings and prepare those minutes for approval by the presiding member of the committee and shall assist the presiding officer in preparing the reports required for submission to the commission under paragraph m of this section.

(e) The commission shall appoint to the committee members from each of the following industry and consumer interests:

(1) One third-party inspector certified by the commission under chapter 303 of this title.

(2) One professional engineer certified by the commission under chapter 303 of this title.

(3) Two persons who have experience representing consumers or homeowner interests.

(4) Two persons who are homeowners, who are not builders and who do not own and are not employed or otherwise engaged in a trade involving residential construction.

(5) One attorney licensed in the State of Texas whose primary practice is the representation of consumers in the area of alleged home construction disputes with builders.

(6) Three persons, each of whom is a registered builder or representative of registered builders under chapter 303 of this title. It is the desire of the commission that these members will represent remodelers and builders of differing volumes of registered homes.

(7) One person who is a representative of a trade association that is composed of builders, remodelers and associate members related to residential construction.

(8) One attorney licensed in the State of Texas whose primary practice is the representation of builders in the area of alleged construction disputes with homeowners.

(f) Removal of members. Members of the committee serve at the pleasure of the commission. The commission may remove a member from the committee by a majority vote of the commission.

(g) Conditions of membership. The term of office for each member appointed by the commission shall be staggered for a two-year term. Half of the initial appointments will be for a three-year term and half will be for a two-year term to achieve staggered terms thereafter. A member whose term has expired shall continue to serve until a qualified replacement is appointed by the commission. In the event that a member appointed by the commission cannot complete his or her term or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(h) No compensation. Committee members appointed by the commission shall serve without compensation. Committee members appointed by the commission are not entitled to reimbursement from the commission for travel and per diem incurred in the performance of their official duties.

(i) Meetings. The committee shall meet twice a year unless directed otherwise by the commission. The committee shall be subject to meeting at the call of the presiding member. A quorum shall consist of a majority of the committee membership.

(j) Notice of meeting. The presiding member shall coordinate with the commission to ensure all interested parties are provided with reasonable notice of the meeting. All public notices of upcoming meetings shall encourage interested parties to make suggested changes to the performance standards to the committee for its consideration. Each notice of meeting shall include information on how to submit to the committee suggested changes to the performance standards. All

meetings shall be conducted in accordance with chapter 551 of the Government Code and notices of meetings shall be posted in compliance with chapter 551 of the Government Code.

(k) Public participation. Any interested person may submit suggested changes to the performance standards to the committee.

(1) A suggested change to the performance standards must be received by the committee no later than thirty days before the committee's next public meeting.

(2) A suggested change to the performance standards shall be in writing and shall include a brief explanation of the performance standard, the reason the new or amended performance standard should be adopted or repealed, and complete text for the suggested change.

(3) All proposed text to amend a performance standard shall be indicated by striking through the words, if any, to be deleted from the current performance standard and by underlining the words, if any, to be added to the current performance standard.

(4) The submission to the committee of a suggested change to the performance standards shall not be considered a petition for rulemaking under §301.2 of this chapter.

(l) Reports. Not later than thirty days after each committee meeting, the presiding member shall prepare a report to the commission. The report shall contain the minutes of the meeting, a memo summarizing the meeting, and recommendations by the committee.

(m) Recommendations. If the committee recommends a change to the performance standards, the committee shall submit a draft rule to the commission for consideration for rulemaking. The committee shall attach the original suggested change to the draft rule. The committee shall also report to the commission a synopsis of all suggested changes submitted to the committee that the committee declined to recommend. The commission shall consider the committee's report at the first public commission meeting following submission of the committee's report.

(n) Evaluation of costs and effectiveness. The commission shall evaluate the committee annually. Evaluation shall be conducted by an evaluation team appointed by the Executive Director. The evaluation team shall report to the commission in open meeting each August of findings regarding the committee's work, usefulness, and the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee. The commission shall report this information to Legislative Budget Board biennially in connection with the commission's request for appropriations.

(o) The Warranties and Performance Standards Advisory Committee shall be abolished on December 31, 2010, unless otherwise continued by a majority vote of the commission prior to the date of expiration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2005.

TRD-200502381

Christopher Burnett

Assistant General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 463-9638

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CHAPTER 303. REGISTRATION

SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §303.19

The Texas Residential Construction Commission (the "commission") proposes an amendment to §303.19, concerning renewal of builder registration. The amendment is proposed to make builder and remodeler applicants for renewal aware that the commission will consider the failure of the applicant to comply with the commission's request for correspondence regarding written exchanges between the homeowners and builders after completion of the state-sponsored inspection and dispute resolution process (SIRP).

The amendment is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Property Code ch. 416 which requires the commission to consider an applicant's honesty, integrity and trustworthiness when reviewing the application for eligibility.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed section as amended is in effect there will be no fiscal implications for state or local government that result of enforcing or administering the proposed rule.

Mr. Thomas has also determined that for each year of the first five-year period the proposed section as amended is in effect the public will benefit from knowing that builders who fail to comply with commission rules will have that failure considered during the review of renewal applications.

Mr. Thomas has also determined that the effect of the section amendment on individuals and businesses, whether large, small or micro-businesses, may be a decrease in the number of builders and remodelers registered under Chapter 416.

Mr. Thomas has also determined that for each year of the first five-year period the proposed section as amended is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed rule amendment to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Proposed Renewal Rule Amendment" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments submitted electronically that do not have "Proposed Renewal Rule Amendment" in the subject line may not be considered.

The amendment is proposed to further clarify issues considered during the annual renewal application process, including §408.001 of the Property Code, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 and Property Code ch. 416 related to builder applicant eligibility.

The statutory provisions affected by the proposal are Property Code §408.001 and Property Code ch. 416.

No other statutes, articles, or codes are affected by the proposal.

§303.19. Renewal.

(a) After March 1, 2004, a person operating as a builder in this state must keep a current certificate of registration and must renew its certificate of registration prior to the expiration of the effective period shown on the certificate of registration. A builder who fails to maintain a current certificate of registration may be subject to an administrative penalty as determined by the commission.

(b) In order to renew a certificate of registration, a builder shall submit a completed application for renewal of a certificate of registration and the required fee to the commission not later than thirty (30) days prior to the expiration of the effective period shown on the current certificate of registration.

(c) The commission may deny a builder's application to renew the builder's certificate of registration for failure to comply with §313.27 of Chapter 313 on the grounds that the builder has not satisfied the commission of the builder's honesty, trustworthiness and integrity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Christopher Burnett

Assistant General Counsel

Texas Residential Construction Commission

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For further information, please call: (512) 463-9638



SUBCHAPTER E. TEXAS STAR BUILDER PROGRAM

10 TAC §303.300

The Texas Residential Construction Commission ("commission") proposes new section §303.300, relating to the Texas Star Builder Program. The new section outlines the rule's purpose, the commission's eligibility requirements, participation requirements and information of denial, renewal and appeal of denial.

The new section is proposed to implement House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01). The new section is proposed under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 and Chapter 416, Property Code, which requires the commission to establish rules and procedures for a program through which a builder can be designated as a "Texas Star Builder."

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for local governments as a result of enforcing or administering the proposed section. There will be a minor impact on state government from the fees received for membership; however, the fees collected will be applied to the agency's administrative costs for the Texas Star Builder Program.

Mr. Thomas has also determined that for each year of the first five-year period the proposed section are in effect the public will benefit from receiving additional information regarding builders' expertise, experience and commitment to quality home building.

Mr. Thomas has also determined that for each year of the first five-year period the proposed section is in effect there will be no effect on large, small and micro-businesses as a result of the adoption of the proposed section. However, there may be a minimal financial impact on persons who apply for membership due to application and renewal fees and costs for fulfilling the continuing education requirements.

Mr. Thomas has also determined that for each year of the first five-year period the proposed section are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the new section to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Proposed Star Builder Rule" in the subject line. The deadline for submission of comments is thirty days from the date of publication of the proposed section in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments submitted electronically to another electronic address or that do not include "Proposed Star Builder Rule" in the subject line may not be considered.

The new section is proposed to implement legislation enacted during the 78th Legislative Session, Regular Session, House Bill 730 (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), including Title 16, Property Code and specifically, Property Code ch. 416.

No other statutes, articles, or codes are affected by the proposal §303.300. *Texas Star Builder Program*.

(a) Purpose. The Texas Star Builder Program is a voluntary program for builders and remodelers that have been registered and are in good standing under Subchapter A of this chapter for a period of twelve months immediately preceding their application to the program. Participation in this program is not required to be a builder or remodeler in the State of Texas.

(b) Definitions. The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--The person identified on the Certificate of Registration issued by the commission pursuant to subchapter A of this chapter that applies for membership in the Texas Star Builder Program under this section

(2) Continuing education--Commission-approved professional education courses or professional development activities such as workshops, seminars, institutes, conferences or short-term courses that a member must complete annually for continued membership in the Texas Star Builder Program.

(3) Continuous membership--a period of membership in good standing without voluntary or involuntary interruption or lapse.

(4) Foundation Practices--

(A) Foundations are designed by a structural engineer based on a site specific geotechnical report as may be required by the engineer of record;

(B) The site specific geotechnical report is one that is appropriate for the circumstances with the frequency and spacing of the borings determined by the geotechnical engineer;

(C) Foundations are built as designed;

(D) The construction of the foundation system is inspected prior to the placement of the concrete by the engineer or an employee of the engineer who issues an inspection report;

(E) If the foundation system is designed for post-tension cables, then the builder shall maintain a record of the stressing certification;

(F) The builder makes a record of the elevations of the foundation prior to substantial completion of the home or an improvement to the home;

(G) The builder provides to the homeowner a final survey showing that the site drainage is in accordance with the International Residential Code;

(H) The builder who constructs the major structural components of a single-family dwelling or duplex or a material improvement, for a period of ten years following the date of substantial completion, shall maintain:

(i) the plans, specifications and recommendations provided by the engineer and the geotechnical report if required;

(ii) the inspection report;

(iii) the stressing certification; and

(iv) the record of the original elevations.

(5) Member--A person registered as a builder or designated agent by the commission who has been approved by the commission for admission into the Texas Star Builder program.

(6) Responsible Party--An individual who is authorized to act on behalf of a business entity that is a registered builder or remodeler in transactions involving amounts in excess of \$100,000, excluding execution of contracts or instruments of conveyance for the sale of a single lot or dwelling unit, or the acquisition of materials for construction thereof.

(7) SIRP--The State-sponsored Inspection and Dispute Resolution Process.

(c) Eligibility.

(1) An applicant who is not a business entity must satisfy one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; or

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible

party of the applicant holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible party of the applicant has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(2) An applicant that is a business entity, which registered 40 homes or less in the preceding twelve months, must have at least one officer of the applicant who satisfies one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; or

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active member of and has continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible party of the applicant holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible party of the applicant has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(3) An applicant that is a business entity, which registered more than 40 homes in the preceding twelve months, must have at least one officer of the applicant and one employee of the member who is involved in on-site construction activities for each 40 homes registered in the twelve months who each satisfy one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; or

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas, is an active member of and has continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; or

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible party of the applicant holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas and the applicant or a responsible party of the applicant has credible documentation of completion of educational requirements administered by an association

or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(d) Financial Responsibility. An applicant must:

(1) provide documentation from a financial institution, that includes a statement of the following information that at the time of the application:

(A) Applicant has an excellent relationship with the financial institution (or highest standard of relationship, as defined by the financial institution);

(B) Applicant is eligible for an extension of credit for the purpose of residential construction;

(C) Applicant is not in default of any credit obligations to the financial institution; and

(D) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant, any affiliate of the applicant, or any corporate officer, general partner or constituent partner as identified by the applicant to the financial institution, has filed for federal bankruptcy in this state or any state in the seven years immediately preceding the date of the application.

(E) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant has overdrafts or past due notices that have not been brought current in a timely manner within the standards of the lending/banking industry; and

(F) The officer or official of the financial institution that executes the document does not have actual knowledge of any current delinquency in property taxes, unsatisfied judgments or enforceable mechanic's and materialmen's liens on any property for which applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(2) provide a sworn or attested statement of the applicant that:

(A) the applicant, any affiliate or corporate officer, general partner or constituent partner of the applicant has not filed for federal bankruptcy in this state or any other state in the seven years immediately preceding the date of the application;

(B) the applicant is current on all state property taxes unless a protest or legal challenge has been properly filed;

(C) the applicant has no unpaid judgments;

(D) the applicant has no enforceable mechanic's and materialmen's liens on any property for which the applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(3) The requirements of a statement prepared by a financial institution in accordance with paragraph (1) of this subsection do not require the financial institution to conduct any independent investigation beyond the institution's own records and the actual knowledge of the officer or official who executes the document.

(e) Insurance requirements.

(1) A remodeler-applicant must maintain a general liability policy of:

(A) \$300,000 per occurrence, if the applicant registered between 25-75 homes in the preceding twelve months; or

(B) \$500,000 per occurrence, if the applicant registered between 75-125 homes in the preceding twelve months; or

(C) \$1,000,000 per occurrence, if the applicant registered 126 or more homes in the preceding twelve months.

(2) A remodeler-applicant who has registered fewer than 25 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section;

(3) A builder-applicant must maintain a general liability policy of:

(A) \$300,000 per occurrence, if the applicant registered between 50-150 homes in the preceding twelve months;

(B) \$500,000 per occurrence, if the applicant registered between 151-350 homes in the preceding twelve months;

(C) \$1,000,000 per occurrence, if the applicant registered between 351-1000 homes in the preceding twelve months; or

(D) \$2,000,000 per occurrence, if the applicant registered over 1,000 homes in the preceding twelve months.

(4) A builder-applicant who registered fewer than 50 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section.

(f) Construction Practices. The applicant must provide a sworn or attested statement that the applicant shall comply during the term of membership with the requirements of at least three of the following:

(1) the Green Building Program sponsored by the Texas Veterans Land Board or the National Association of Builders, or any successor entities, any local governmental authority or similar programs as approved by the Executive Director;

(2) the Energy Star Program or similar programs as approved by the Executive Director;

(3) Certified Aging-in-place Specialist Program or EasyLiving Home Certification Program;

(4) a private inspection program for at least three (3) phases of construction for all homes built in geographic area that are not inspected by municipal inspectors; or

(5) another nationally-recognized program that requires a greater standard of residential construction practice than required by the commission pursuant to the commission-adopted limited warranty and building and performance standards or usual and customary residential construction practices as approved by the Executive Director; or

(6) Foundation Practices as defined in this section; or

(7) Provide homeowners with whom it enters into a transaction governed by the Act with a third-party warranty program offered by a commission-approved third-party warranty company or provide those homeowners with a two-year warranty for all one-year workmanship and materials items pursuant to the building and performance standards set forth in Subchapter B, Chapter 304 of this title.

(g) Participation. Applicants must agree to actively participate in any eligible SIRP request submitted by a homeowner involving a residential construction project for which the applicant was the builder and must agree to respond to the homeowner in good faith based on the final non-appealable SIRP report and recommendation.

(h) Construction Defects. Effective January 1, 2007, the number of homeowner-submitted eligible SIRP requests for alleged construction defects against an applicant that resulted in a finding of a construction defect in the final non-appealable inspection report may not exceed:

(1) two homes for applicants that registered fewer than 40 homes in the preceding twelve months; or

(2) five percent of the number of homes registered for applicants that registered 40 or more homes in the preceding twelve months.

(i) Application. Applicants must submit a completed commission-prescribed application form and credible documentation supporting the information supplied in the application for each applicant seeking membership or renewal in the Texas Star Builder Program.

(1) An applicant may submit an application for membership in the Texas Star Builder Program only once during any calendar year.

(2) For each applicant seeking membership under this section, the commission shall publish a notice of application in the *Texas Register*.

(A) The commission shall accept written public comment on each application submitted to the commission for a period of twenty-one days following the date of publication of the notice.

(B) The commission will consider comments received in response to published notices of application in the approval process.

(3) Applicants shall respond to inquiries from the commission for further information regarding an application for membership or renewal of membership. Failure to respond to a request for information shall result in the administrative withdrawal of the application.

(4) The commission shall issue a Texas Star Builder certificate of membership to each applicant approved for membership in the Texas Star Builder Program not later than twenty-one days following the expiration of the comment period under this section.

(5) Failure to submit all requested documentation within fifteen days of notice of an incomplete application will result in the administrative withdrawal of the application.

(6) A Texas Star Builder certificate of membership shall remain effective for one year from the date of issuance unless revoked.

(j) Continuing education. Beginning January 1, 2006, all members shall complete at least 16 hours of continuing education per year. A continuing education course cannot be repeated for credit.

(1) For purposes of this requirement:

(A) any individual member must maintain the continuing education requirement;

(B) any member that is a business entity, that registered fewer than 40 homes in the preceding twelve months, shall require at least one officer of the member to maintain the continuing education requirement; or

(C) any member that is a business entity, that registered more than 40 homes in the preceding twelve months, shall require that:

(i) one officer of the member maintains the continuing education requirement; and

(ii) for every 40 homes registered, one employee of the member who is involved in on-site construction activities shall also maintain the continuing education requirement.

(D) Beginning January 1, 2007, evidence of completion of the continuing education requirements of this section must be submitted with each renewal application.

(E) Approved Continuing Education Courses or Programs.

(i) The Executive Director shall annually review all courses or programs submitted and shall approve those sufficient to satisfy the continuing education requirement.

(ii) Any member that registers more than 30 homes per year who wishes to conduct an in-house training program for its employees in order to satisfy the continuing education requirement of this section may submit course materials to the Executive Director for approval. The Executive Director shall consider in the approval process of a proposed in-house training program, the objective and purpose of the program, the content and subject matter of each course and the qualifications of the presenters.

(iii) Any person who wishes to sponsor a course or training program for continuing education purposes under this section must submit a written request for consideration, a detailed course agenda, a written course description and resume or biographical information of each speaker or presenter to the Executive Director for approval, not later than thirty days prior to the proposed event.

(2) Substitutions for Continuing Education Coursework.

(A) A member may substitute not more than three credit hours of continuing education per membership year for participation in an active leadership role (such as an officer or committee chairperson) in a trade association for the membership year in which the continuing education hours would have been taken. To receive this leadership credit, the member shall submit to the commission written verification from the president, executive officer, or other equivalent of the association, certifying the member's leadership status.

(B) A member may not substitute more than two credit hours of continuing education for self-study. To receive this self-study credit, the member must submit to the commission a statement that verifies the completion of self-study and the materials studied.

(C) A member may substitute instructor credit for up to five credit hours of continuing education. Each hour of instruction given is equivalent to an hour of continuing education credit. To receive this instructor credit, the member must submit to the commission a copy of the published course agenda.

(k) Renewal. In order to renew membership in the Texas Star Builder Program, a person must submit a completed application for renewal with the required documentation set forth in this section to the commission not later than thirty days prior to the expiration of the effective date shown on the current Texas Star Builder certificate of membership.

(l) Denial.

(1) The commission shall deny an application for membership or the renewal of membership in the Texas Star Builder Program if the commission determines that the applicant is ineligible for admission or for continued membership in the program.

(2) If the commission denies an application for membership or the renewal of membership, the commission shall provide written notice to the applicant not later than the fifteenth business day following the expiration of the public comment period set forth in this section.

(3) The commission shall state the reason(s) for denial of membership or renewed membership in the Texas Star Builder Program in its written notice to the applicant and provide notice of the opportunity for appeal.

(m) Appeal of Denial.

(1) An applicant who receives a notice of denial under §303.306 of this subchapter may appeal the decision to the Executive Director by submitting a written request for reconsideration not later than thirty days from receipt of the notice of denial.

(2) The decision of the Executive Director regarding the appeal is a final agency decision not subject to further administrative appeal.

(n) Revocation of Membership.

(1) The commission shall revoke a certificate of membership in the Texas Star Builder Program if the commission determines that:

(A) the member has been subject to a final disciplinary action from the commission pursuant to §418.001 of the Act;

(B) the member used fraud or deceit in obtaining the certificate of membership;

(C) the member is no longer eligible for a Certificate of Registration as a builder or is no longer eligible to serve as a designated agent for a builder; or

(D) the member's Certificate of Registration has been suspended, is placed in inactive status or the member has been placed under a commission probation order.

(2) If a membership is revoked, the commission shall provide written notice to the member not later than the fifth day after the revocation becomes effective.

(3) The commission shall state the reason(s) for the revocation in its written notice to the member.

(4) A member whose certificate of membership is subject to revocation for a finding under §303.308(a)(2) shall be provided an opportunity for appeal.

(o) Appeal from Revocation.

(1) A member whose membership has been revoked under §303.308(a)(2) may appeal the decision by submitting a written request for reconsideration to the Executive Director within ten days of receipt of notice of revocation.

(2) The decision of the Executive Director on the appeal is a final agency decision not subject to further administrative appeal.

(3) Upon expiration or notice of final revocation of membership in the Texas Star Builder Program, the former member shall immediately return the Texas Star Builder certificate of membership and discontinue the use and dissemination of the "Texas Star Builder" designation on all advertisements, promotions or written material.

(p) Recognition of Membership. A member may display the Texas Star Builder logo approved and submitted for trademark so long as that member remains in good standing as a member of the Star Builder Program. Members who have had continuous membership in the Star Builder Program may display the number of years of continuous membership.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2005.

TRD-200502383

Christopher Burnett

Assistant General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 463-9638



CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §313.8

The Texas Residential Construction Commission ("commission") proposes an amendment to §313.8, relating to fee waivers and reductions for inspection fees in the state-sponsored inspection and dispute resolution process (SIRP). The proposed amendment sets forth the process by which fee waivers are considered for approval.

The amendment is proposed to incorporate into rule the mechanism used for review and approval of inspection fee waiver and reduction requests submitted as part of the SIRP. The amendment does not increase the number of waivers and reductions requests which would be eligible for approval but simply incorporates into rule the current agency procedure for reviewing fee waiver and reduction requests.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for local governments as a result of enforcing or administering the proposed section.

Mr. Thomas has also determined that for each year of the first five-year period the proposed amendment is in effect the public will benefit from knowing the process by which the commission considers inspection fee waiver and reduction requests.

Mr. Thomas has also determined that for each year of the first five-year period the proposed amendment is in effect there will be no significant effect on individuals or large, small and micro-businesses as a result of the adoption of the proposed rule.

Mr. Thomas has also determined that for each year of the first five-year period the proposed amendment is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed section in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Fee Waiver Rule Amendment" in the subject line. Comments submitted electronically to another electronic address or that do not include "Fee Waiver Rule Amendment" in the subject line may not be considered.

The amendment is proposed under Property Code §408.001, which provides generally authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code §426.004(a) and (b) and the Appropriations Act passed by the 79th Texas Legislature, which requires the commission to adopt rules permitting the waiver or reduction of the inspection fees for homeowners demonstrating financial inability to pay the expenses and sets the inspection fees at the lowest possible rate necessary to cover the costs associated with the third-party inspections.

No other statutes, articles, or codes are affected by the proposal.

§313.8. Inspection fee.

(a) The commission will establish a fee that is commensurate with the scope of the requested inspection and the type of construction defect(s) alleged and which is set at the lowest possible rate necessary to cover the cost associated with the third-party inspection.

(b) The commission shall publish the established fee on its website and make it available to the public in writing.

(c) The request to initiate the SIRP must include the appropriate inspection fee.

(d) A requestor who is able to show financial need may submit a request for a reduction or waiver of the inspection fee.

~~{(1) The request for a reduction or waiver of the inspection fee must include a sworn affidavit of inability to pay fees on a commission-prescribed form at the time the request to initiate an SIRP is filed.}~~

~~{(2) The Executive Director shall review any request for a fee reduction or waiver and the supporting affidavit to determine whether to approve or deny the request.}~~

~~{(3) The Executive Director's decision on a request for fee reduction or waiver is a final agency decision and is not subject to further administrative appeal.}~~

(e) The request for a reduction or waiver of the inspection fee must include a sworn affidavit of inability to pay fees on a commission-prescribed form at the time the request to initiate an SIRP is filed.

(f) The Executive Director shall review any request for a fee reduction or waiver and the supporting affidavit to determine whether to approve or deny the request.

(g) The Executive Director shall approve a request to reduce or waive the inspection fee if the requestor:

(1) has monthly financial obligations that amount to more than 40% of the requestor's gross monthly income, and;

(2) does not have more than two months of net income in liquid assets.

(h) If the Executive Director approves a request to reduce or waive the inspection fee, the inspection fee shall be reduced or waived based on the following schedule:

(1) 35% of the fee shall be waived if the requestor has monthly financial obligations between 40.00% and 45.00% of the requestor's gross monthly income.

(2) 70% of the fee shall be waived if the requestor has monthly financial obligations between 45.01% and 49.99% of the requestor's gross monthly income.

(3) 100% of the fee shall be waived if the requestor has monthly financial obligations of 50% or more of the requestor's gross monthly income.

(i) The Executive Director may grant exceptions to subsections (g) and (h) of this section upon a written showing of unique need. Any exemption granted by the Executive Director to subsections (g) and (h) of this section must be in writing.

(j) The Executive Director's decision on a request for fee reduction or waiver is a final agency decision and is not subject to further administrative appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502368

Christopher Burnett

Assistant General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 463-9638



10 TAC §313.27

The Texas Residential Construction Commission ("commission") proposes new §313.27, relating to correspondence between builders and homeowners after the state-sponsored inspection and dispute resolution process (SIRP) has concluded. The proposed new section sets forth the requirement that builders provide the commission with copies of written exchanges between the builder and homeowner relating to post-SIRP settlement offers and other correspondence as may be requested by the commission. Failure to comply with the new proposed section may result in denial of registration renewal under Property Code Chapter 416.

The new section is proposed to provide a mechanism for the commission to keep abreast of the number of SIRPs that result in repairs or settlements of post-construction defect disputes.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed new section is in effect there will be no fiscal implications for local governments as a result of enforcing or administering the proposed sections.

Mr. Thomas has also determined that for each year of the first five-year period the proposed new section is in effect the public will benefit from knowing that the commission has complete information about the number of SIRPs that result in repair or settlement.

Mr. Thomas has also determined that for each year of the first five-year period the proposed new section is in effect there will be no significant effect on individuals or large, small and micro-businesses as a result of the adoption of the proposed rule. There may be a minimal effect on registered builders and remodelers who are required to provide copies of written correspondence to the commission as a result of the new section.

Mr. Thomas has also determined that for each year of the first five-year period the proposed new section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed sections in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Post SIRP Correspondence Rule" in the subject line. Comments submitted electronically to another electronic address or that do not include "Post SIRP Correspondence Rule" in the subject line may not be considered.

The new section is proposed under Property Code §408.001, which provides generally authority for the commission to adopt rules necessary for the implementation of Title 16 and Property Code, Chapter 416, which requires the commission to consider an applicant's honesty, integrity and trustworthiness when determining the applicant's eligibility for registration as a builder or remodeler.

No other statutes, articles, or codes are affected by the proposal.

§313.27. Post-SIRP Correspondence.

(a) A builder shall provide copies to the commission of any written correspondence between the builder and the homeowner or between the parties' representatives relating to offers of repair under §§313.21 through 313.25 of this chapter.

(b) A builder shall respond in writing within ten (10) days of receipt of a commission request for information on any written correspondence between the builder and the homeowner or other information relating to post-SIRP communications between the builder and the homeowner.

(c) Failure to comply with either subsection (a) or (b) may result in disciplinary proceedings pursuant to Subchapter B of Chapter 305 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502367

Christopher Burnett
Assistant General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: July 24, 2005
For further information, please call: (512) 463-9638



TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE SUBCHAPTER B. BARBER COLLEGES, SCHOOLS, AND STUDENTS

22 TAC §51.12

The Texas State Board of Barber Examiners proposes an amendment to §51.12, concerning Inspection of New Barber School or College.

The amendment is proposed to remove the requirement that the inspection of the proposed new barber school or college be conducted specifically by two board member or by one board member and the executive director.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government, general public, small or micro business as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five year period the rule is in effect, the public benefit will be that the agency can respond quickly in inspecting schools by staff rather than board members.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

No other code, article, or statute is affected by this proposed amendment.

§51.12. Inspection of New Barber School or College.

The department [~~Two board members or one board member and the board's executive director~~] shall inspect a proposed new barber school or college to determine that it fulfills all requirements of the department [~~board~~] and of the Texas Barber Law. The payment of the required inspection (permit) fee or the re-inspection fee must be received by the department [~~board~~] before the initial inspection or re-inspection will be scheduled.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502350
Glenn D. Parker
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: July 24, 2005
For further information, please call: (512) 936-6333



22 TAC §51.13

The Texas State Board of Barber Examiners proposes an amendment to §51.13, concerning Change of Ownership of Barber School.

The amendment is proposed to remove the requirement that the inspection of a barber school or college that has changed ownership be conducted specifically by two board members or one board member and the board's executive director.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government, general public, small or micro business as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five year period the rule is in effect, the public benefit will be that the agency can respond quickly in inspecting schools by staff rather than board members.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

No other code, article, or statute is affected by this proposed amendment.

§51.13. Change of Ownership of Barber School.

(a) If a barber school or college changes ownership, the new owner shall notify the department [~~board~~] of the transfer not later than the 10th day before the date on which the change becomes effective.

(b) The department [~~Two board members or one board member and the board's executive director~~] shall inspect a barber school or college which has changed ownership to determine that it fulfills all requirements of the department [~~board~~] and of the Texas Barber Law, §9.

(c) A new permit fee and contract shall be required from a barber school or college which has changed ownership.

(d) The new owner of the school shall execute a new contract for approval with the department [~~board~~] and shall secure a new permit within 30 days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200502351

Glenn D. Parker
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: July 24, 2005
For further information, please call: (512) 936-6333



22 TAC §51.20

The Texas State Board of Barber Examiners proposes an amendment to §51.20, concerning Applying for Enrollment.

The amendment is proposed to remove the requirement that the enrollment form be notarized and to delete subsection (c)(4) requiring a health certificate for the student in order to confirm to statutory changes made by the 79th legislature.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government, general public, small or micro business as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five year period the rule is in effect, the public benefit will be saving licensees time and expense of being examined by a doctor and the need of a notary.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

No other code, article, or statute is affected by this proposed amendment.

§51.20. Applying for Enrollment.

(a) Each person enrolling in an approved barber school or college in Texas must apply on forms furnished by the department [board].

(b) This record is subject to inspection by the department [board] or any of its officers or employees.

(c) A barber school or college shall submit each application for enrollment which shall include the following four items;

(1) The original of the application for enrollment form[; completed and notarized]. If the applicant is attending on a part-time basis, he or she shall specify that on the upper right corner of the original.

(2) Proof of a seventh-grade education or its equivalency. This shall be in the form of a transcript or photostatic copy of the diploma, equivalency certificate, or record.

(3) Two recent, identical, permanent-type photographs, size two-inch by two-inch, with applicant's signature on front. No Polaroid photographs will be accepted.

[(4) A current health certificate, signed by a physician or doctor of osteopathic medicine and notarized. The board will furnish a health certificate form.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

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Glenn D. Parker
Executive Director
Texas State Board of Barber Examiners
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For further information, please call: (512) 936-6333



22 TAC §51.21

The Texas State Board of Barber Examiners proposes an amendment to §51.21, concerning Enrollment Application Deadline.

The amendment is proposed to delete the reference to a physician statement in order to conform to statutory changes made by the 79th legislature.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government, general public, small or micro business as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five year period the rule is in effect, the public benefit will be in saving licensee time and expense of being examined by a doctor.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

No other code, article, or statute is affected by this proposed amendment.

§51.21. Enrollment Application Deadline.

Application for enrollment in a barber school or college must be sent to the department [board] in complete form within seven days of actual date of enrollment[; which shall be no earlier than the date of the physician statement required by §51.20].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502354
Glenn D. Parker
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: July 24, 2005
For further information, please call: (512) 936-6333



22 TAC §51.25

The Texas State Board of Barber Examiners proposes an amendment to §51.25, concerning Reenrollment or Transfer.

The amendment is proposed to delete the reference to health certificate in subsection (d) in order to conform to statutory changes made by the 79th legislature.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government, general public, small or micro business as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five year period the rule is in effect, the public benefit will be to students in saving time and expense of examination by a doctor.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

No other code, article, or statute is affected by this proposed amendment.

§51.25. Reenrollment or Transfer.

(a) If a student returns to the same school or college after interruption the school or college shall notify the department [board] in writing and a new student certificate shall be issued.

(b) When a barber school or college accepts a transfer of a student from another school or college the accepting school, shall on behalf of the student, submit to the department [board] in writing the student's enrollment application and a request that the department [board] issue a new student certificate for the transferring student.

(1) Upon receipt of the accepting schools notification of transfer the department [board] shall notify the school or college at which the student was formerly enrolled of such transfer.

(2) upon receipt of the department's [boards] transfer notification the manager or owner of the barber school or college shall, within seven days of receipt of the department's [boards] transfer notification, send to the department [board] the student certificate with the following information written on the back:

- (A) the last day of the student's attendance;
- (B) the number of credit hours accrued by the student;
- (C) and the managers or owners signature.

(c) No reenrolled or transferred students may take instruction or accrue hours for practical work or theory unless the new student certificate issued by the department [board] is on display at or near the students work station.

~~{(d) A student who is reenrolled after a period of 90 days interruption shall furnish the office of the board with a new health certificate.}~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502355

Glenn D. Parker
Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 936-6333

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**SUBCHAPTER C. EXAMINATION AND
LICENSING**

22 TAC §51.51

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Barber Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Barber Examiners proposes the repeal of 22 Texas Administrative Code Chapter 51, Subchapter C, §51.51, concerning method of payment.

The repeal is for the purpose of removing the requirement to pay by cashier's check or money order.

Glenn D. Parker, Executive Director, has determined that for the first five year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of implementing the repeal.

Mr. Parker has also determined that for each year of the first five years the proposed repeal is in effect the public benefit will be that it will result in savings to the licensees, equal to the costs of obtaining a money order or cashier's check. There will be no cost to the general public, small or micro businesses, or individuals who are required to comply with the proposal.

Written comments on the proposed repeal may be submitted to Glenn D. Parker, Executive Director, Texas State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731.

The repeal is proposed pursuant to the authority of the Texas Occupations Code §1601.151 which authorizes the Texas State Board of Barber Examiners to adopt and enforce all rules necessary for the performance of its duties.

The proposed repeal will not affect any existing statute.

§51.51. Payment of Fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2005.

TRD-200502345

Glenn D. Parker
Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 936-6333

◆ ◆ ◆
22 TAC §51.55

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas State Board of Barber Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Barber Examiners proposes the repeal of 22 Texas Administrative Code Chapter 51, Subchapter C, §51.55, concerning the required number of questions that shall be on examinations administered by the board.

Glenn D. Parker, Executive Director, has determined that for the first five year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of implementing the repeal.

Mr. Parker has also determined that for each year of the first five years the proposed repeal is in effect the public benefit will be that of removing unnecessary restrictions on the development of psychometrically sound written examinations. There will be no cost to the general public, small or micro businesses, or individuals who are required to comply with the proposal.

Written comments on the proposed repeal may be submitted to Glenn D. Parker, Executive Director, Texas State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731.

The repeal is proposed pursuant to the authority of the Texas Occupations Code §1601.151 which authorizes the Texas State Board of Barber Examiners to adopt and enforce all rules necessary for the performance of its duties.

The proposed repeal will not affect any existing statute.

§51.55. Number of Examination Questions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2005.

TRD-200502346

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 936-6333



22 TAC §51.57

The Texas State Board of Barber Examiners proposes an amendment to §51.57, concerning Applying for Examination.

The action is proposed to delete requirements in subsection (b)(1) and (2) that applications and school owner/manager statements be notarized, delete reference to health certificate in subsection (b)(3), and delete language in subsection (b)(4) requiring payment by money order or cashier's check.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for state or local government, the general public, or small or micro businesses as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five year period the rule is in effect, the public benefit will be to save owners and managers the expense of notarizing applications, eliminate the expense of obtaining a money order or cashier's check and paying by personal check.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

No other code, article or statute is affected by this proposed amendment.

§51.57. Applying for Examination.

(a) Upon completion of 1,500 hours in not less than nine months, a student may apply for examination for a Class A registered barber certificate. This application shall be on forms furnished by the department [board].

(b) Each applicant shall submit to the department [board] the following:

(1) the application for examination form[; ~~completed and notarized~~];

(2) a [notarized] statement from the manager or owner of the barber school, stating that [swearing] the course is completed;

[~~(3) a current health certificate, signed by a physician or doctor of osteopathic medicine and notarized. The board will furnish a health certificate form;~~]

(3) [(4)] the examination fee; [as reflected in the statute in the form of a money order or cashier's check. Personal checks are not accepted.];

(4) [(5)] the student certificate with photograph. Unless the student supplied a size two-inch by two-inch permanent-type photograph (no Polaroid photographs) upon application for enrollment, he or she shall submit a new photograph of this size and type.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502356

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 936-6333



22 TAC §51.60

The Texas State Board of Barber Examiners proposes an amendment to §51.60, concerning Items to Bring to Examination.

The amendment is proposed to delete subsection (c) referencing items to bring for wig specialist examination, which is no longer offered.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government, general public, small or micro business as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five year period the rule is in effect, there is no public benefit because the rule relates to examination no longer offered by the barber board.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

No other code, article, or statute is affected by this proposed amendment.

§51.60. Items to Bring to Examination.

(a) When appearing for an examination for a Class A registered barber certificate or a teacher's certificate, the examinee shall bring the instruments necessary to give a practical demonstration of barbering services.

(b) An examinee for a manicurist or barber technician license shall bring to the examination any instruments necessary for a practical demonstration of the services distinctive to his or her specialty.

~~((c) An examinee for a wig specialist or wig instructor license shall bring a male wig not less than five inches in hair length which he or she will be required to clean, cut, and complete the style. He or she will also be required to bring all necessary implements to fit a complete skull pattern of a hairpiece.))~~

(c) ~~((d))~~ The examinee shall provide a model, of 18 years of age or older, on whom to demonstrate the practical work. Each examinee is required to wear a clean and fastened barber smock, without any lettering or logos during both written and practical portions of the exams.

(d) ~~((e))~~ The examinee shall provide a current, valid photo identification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502357

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 936-6333



22 TAC §51.77

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Barber Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Barber Examiners proposes the repeal of 22 Texas Administrative Code Chapter 51, Subchapter C, §51.77, concerning requirement to operate a barber shop.

The repeal is for the purpose of removing requirements that: (1) the applicant holds a Class A barber certificate; and (2) the applicant has practiced barbering for at least 12 months to conform with changes made to Chapter 1601 of the Texas Occupations Code by the 79th Legislature.

Glenn D. Parker, Executive Director, has determined that for the first five year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of implementing the repeal.

Mr. Parker has also determined that for each year of the first five years the proposed repeal is in effect the public benefit will be to obtain shop permit with out restrictions. There will be no cost to the general public, small or micro businesses, or individuals who are required to comply with the proposal.

Written comments on the proposed repeal may be submitted to Glenn D. Parker, Executive Director, Texas State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731.

The repeal is proposed pursuant to the authority of the Texas Occupations Code §1601.151 which authorizes the Texas State Board of Barber Examiners to adopt and enforce all rules necessary for the performance of its duties.

The proposed repeal will not affect any existing statute.

§51.77. Barber Shop Permit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2005.

TRD-200502347

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 936-6333



22 TAC §51.80

The Texas State Board of Barber Examiners proposes an amendment to §51.80, concerning Transfer of Student Hours from Out of State.

The amendment is proposed to delete a reference to health certificate in subsection (a)(4) to conform with statutory changes made by the 79th legislature and to delete the requirement that the examination fee be paid by money order or cashier's check.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government, general public, small or micro business as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five year period the rule is in effect, the public benefit will be saving of time and money to obtain a health certificate.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

No other code, article, or statute is affected by this proposed amendment.

§51.80. Transfer of Student Hours from Out of State.

(a) A student barber may transfer hours of training as a barber from school of other states to Texas by:

(1) presenting to the department [board] an official [a notarized] transcript from the school attended, showing hours credited;

(2) a statement from the barber board of that state giving hours credited;

(3) proof of at least a seventh grade education;

[(4) a current health certificate;]

(4) [(5)] two recent, identical pictures, size two inches by two inches; and

(5) [(6)] examination fee [in the form of a money order or cashier's check].

(b) If the student has not completed 1,500 hours in another state, credit for hours completed will be given when he or she is enrolled in a Texas barber school and when a student certificate is issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502358

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 936-6333



22 TAC §51.85

The Texas State Board of Barber Examiners proposes an amendment to §51.85, concerning Reciprocal/Endorsement Licensing of Barbers.

The amendment is proposed to delete the reference to specific fee amounts in subsection (a), to delete the reference to physician's certificate in subsection (g) and to delete subsection (k) in its entirety.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government, general public, small or micro business as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five year period the rule is in effect, the public benefit will be the student not having the expense of money order or cashier's check.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties.

No other code, article, or statute is affected by this proposed amendment.

§51.85. Reciprocal/Endorsement Licensing of Barbers.

(a) Applicant may call or write the department [board] office to obtain the prescribed application forms by mail. The completed application, all required documents, and fees [money order or cashier's check for the \$90 application fee and the \$80 licensing fee] for a [two-year] Class A registered barber certificate and the fee for the current hand book published by the board containing the law and regulation governing the practice of barbering must be mailed or presented in person to the department [board] office in Austin.

(b) Applicant must be at least 16 years of age.

(c) Applicant must submit proof of a seventh grade education.

(d) Applicant must present a current original barber license from the home licensing state or country.

(e) Applicant must submit a certified transcript of hours completed in an approved barber school and proof of graduation. If the applicant has an apprentice or assistant barber license, proof of 1,500 hours of barber school or working experience will be required from the licensing board or barber school.

(f) Texas requires 1,500 hours of training substantially equivalent to the Texas curriculum. If the applicant graduated in a state that required less than 1,500 hours, documented work experience may be substituted at the rate of 25 hours per month worked, up to a maximum of 500 hours, or the applicant must complete the balance of hours required in an approved Texas barber school.

[(g) Applicant must submit a physician's certificate on the prescribed form signed by a physician or doctor of osteopathic medicine.]

(g) [(h)] Applicant must submit one current two-inch by two-inch process photograph (not Polaroid).

(h) [(i)] Applicant must submit a letter from the licensing board in the home state, bearing its official seal of office, stating that the applicant's license is current and that no disciplinary action has been taken or is pending against the applicant.

(i) [(j)] If the documents submitted do not all bear the same name, applicant must submit authentication of a change of name in the form of a photostatic copy of the applicable court order or marriage license.

[(k) The application fee for reciprocal/endorsement licensing is \$90. The licensing fee for a two-year Class A barber certificate is \$80. Both fees must be paid at the time of application in the form of a money order or cashier's check. The application fee is nonrefundable. The licensing fee will be refunded if the application is disapproved. The Class A barber certificate is renewable biannually, upon proper application and payment of the renewal fee.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502359

Glenn D. Parker
Executive Director
Texas State Board of Barber Examiners
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For further information, please call: (512) 936-6333

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.31, §291.33

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definitions, and §291.33, concerning Operational Standards. The amendments, if adopted, will require Class A pharmacies to be locked by key, combination, mechanical or electronic means, to prohibit access when a pharmacist is not on site and require the Class A pharmacies to be enclosed by walls, partitions or other means of enclosure. In addition, the amendments, if adopted, will allow only pharmacists to possess keys or electronic access to the pharmacy except for emergency situations. The amendments to §291.31, if adopted, will add the definition of a prescription drug to this section.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. Dodson has also determined that for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended sections will be to ensure the security of Class A pharmacies and prevent the diversion of prescription drugs from the pharmacies. There may be some pharmacies that would require construction to comply with the proposed changes. Due to the variety of pharmacy settings and floor plans, it is impossible to project the cost of construction required to comply.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 29, 2005.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.31. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (35) (No change.)

(36) Prescription drug--

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(37) [(36)] Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(38) [(37)] Prospective drug use review--A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(39) [(38)] State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(40) [(39)] Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(41) [(40)] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act.

§291.33. Operational Standards.

(a) (No change.)

(b) Environment.

(1) (No change.)

(2) Security.

(A) (No change.)

(B) Any area of a pharmacy that contains prescription drugs [The prescription department] shall be locked by key, [or] combination, or other mechanical or electronic means so as to prohibit [prevent] access when a pharmacist is not on-site and shall be enclosed by walls, partitions or other means of enclosure. [However, the pharmacist-in-charge may designate persons who may enter the pharmacy to perform functions designated by the pharmacist-in-charge (e.g., janitorial services):]

(C) Only a pharmacist may possess a key or electronic access to the prescription department. However, an additional key or electronic access to the prescription department may be maintained in a secure location outside the prescription department for use during an emergency by the individual(s) authorized by the pharmacist-in-charge. A log shall be maintained indicating the name of each non-

pharmacist accessing the prescription department, date, time of entry, and the nature of the emergency.

(3) (No change.)

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) - (D) (No change.)

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section [~~or clause (ii) of this subparagraph~~].

~~{{(ii) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy; provided the short periods of time do not exceed two hours in a 24 hour period; and provided a record of the delivery is maintained containing the following information:}}~~

~~{{(I) date of the delivery;}}~~

~~{{(II) unique identification number of the prescription drug order;}}~~

~~{{(III) patient's name;}}~~

~~{{(IV) patient's phone number or the phone number of the person picking up the prescription; and}}~~

~~{{(V) signature of the person picking up the prescription.}}~~

~~{{(iii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.}}~~

(ii) [(iv)] A Class A pharmacy shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information designed for the consumer.

(F) - (I) (No change.)

(2) - (7) (No change.)

(d) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2005.

TRD-200502389

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 305-8028



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.1

The Texas Board of Physical Therapy Examiners proposes amendments to §341.1, concerning Requirements for Renewal. The changes will update the rule to reflect the addition of the online renewal application and related changes to board procedures.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the assurance that licensees have clear guidance on what to expect regarding renewal procedures. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by these amendments.

§341.1. Requirements for Renewal.

(a) Biennial renewal. Licensees are required to renew their licenses every two years by the end of the month in which they were originally licensed. A licensee may not provide physical therapy services without a current license or renewal certificate in hand. If a license expires after all required items are submitted, but before the licensee receives the renewal certificate, the licensee may not provide physical therapy services.

(b) General requirements. The renewal application is not complete until all required items are received by the board. The components required for license renewal are:

(1) a signed renewal application form or the online equivalent, documenting completion of board-approved continuing education (CE), as described in §341.2 of this title, concerning Continuing Education;

(2) the renewal fee, and any late fees which may be due; and

(3) a passing score on the jurisprudence examination.

(c) Notification of license expiration. The board will send notification [~~mail an application~~] to each licensee at least 30 days prior to the license expiration date. The licensee bears the responsibility for ensuring that the license is renewed. [~~Licensees should contact the board if they do not receive a renewal application 30 days prior to the expiration date.~~]

(d) Late renewal. A renewal application is late if all required items are not postmarked prior to the expiration date of the license. Licensees who do not submit all required items prior to the expiration date are subject to late fees as described.

(1) If the license has been expired for 90 days or less, the late fee is one-half of the examination fee for the license.

(2) If the license has been expired for more than 90 days but less than one year, the late fee is equal to the examination fee for the license. Licensees who are more than 90 days late in renewing a license are not included in the audit, and must submit documentation of continuing education at time of renewal.

(3) If the license has been expired for one year or longer, the person may not renew the license. To obtain a new license, the applicant must take and pass the national examination again and comply with the requirements and procedures for obtaining an original license set by §329.1 of this title (relating to General Licensure Procedure).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2005.

TRD-200502322

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 305-6900



22 TAC §341.20

The Texas Board of Physical Therapy Examiners proposes amendments to §341.20, concerning Licensees Called to Active Military Duty. The changes would extend the waiver of continuing education to all licensees who are called to active duty while serving in the military reserves, and clarifies how the waiver will be applied.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the assurance that licensees in the reserves who are called to active military service will not be penalized for that service. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by these amendments.

§341.20. *Licensees Called to Active Military Service.*

(a) **Renewal.** A licensee who is a member of the reserves and called to active military service must submit renewal fees within 90 days after active service has ended if their license expired within the months of active service. The regular renewal month will not change. The licensee must submit official documentation [evidenece] of active service and its inclusive dates.

(b) Continuing education units (CEUs).

(1) A licensee who is a member of the reserves and called to active military service will have his/her CEUs prorated in proportion to the number of months of documented active service.

(2) A licensee whose license expires during the period of active service will be given a complete waiver of CEUs for the past renewal period, and CEUs for months of documented active service in the current renewal cycle will be prorated.

(3) All licensees must take two hours of board-approved programs in ethics and professional responsibility as part of their total CE requirement, which cannot be prorated.

[(b) Continuing education units (CEUs): A licensee who is a member of the reserves and called to active military service whose license expired during the period of active service will be given a waiver of CEUs. The regular renewal month will not change. The CEUs for the following biennial renewal will be prorated, i.e., eliminating percentages of required CEUs for the months of active service.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2005.

TRD-200502321

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 305-6900



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 59. PARKS

SUBCHAPTER F. STATE PARK OPERATIONAL RULES

31 TAC §59.131, §59.134

The Texas Parks and Wildlife Department (TPWD) proposes amendments to §59.131 and §59.134, concerning State Park Operational Rules.

The amendment to §59.131, concerning Definitions, would add a definition for the term 'garbage,' which is necessary to provide a precise, unambiguous meaning for purposes of informing park visitors of inappropriate or unlawful conduct and, if necessary, for enforcing the terms of the amendment to §59.134, which would prohibit the disposal of garbage on state parks except under certain circumstances.

The amendment to §59.134, concerning Rules of Conduct in Parks, would prohibit the dumping of garbage in state parks, except for garbage generated during park visitation or garbage that could reasonably be expected to accumulate during a day's travel. TPWD has noted the increasing frequency of the practice of using park visitation privileges to dispose of everything from household waste to construction debris in disposal facilities on state parks. Persons engaging in such conduct have discovered that it is less expensive to pay for entry to a park and dispose of garbage in remote or unsupervised areas than it is to pay to dump garbage in a landfill or other such facility. Such dumping on state parks creates unsightly and noisome detractions from recreational enjoyment and could pose health hazards to park visitors and employees (due to hazardous materials such as carcinogens, asbestos, medical waste, etc.). In any case, the practice creates an unnecessary and avoidable burden for TPWD in the form of additional time and expense in disposing of garbage that was not generated as a consequence of park visitation or travel. Therefore, TPWD proposes to delineate the specific circumstances under which garbage may be lawfully deposited in state parks.

Robert Macdonald, Regulations Coordinator, has determined that for each year of the first five years that the amendments as proposed are in effect, there will be fiscal implications to state government as a result of enforcing or administering the amended sections. TPWD expects that there will be reduced costs to the department of paying for the removal of garbage; however, the department is unable to quantify the cost savings. There will be no fiscal implications to units of local government as a result of enforcing or administering the amended sections.

Mr. Macdonald also has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the amendments as proposed will be the ability of the department to increase the aesthetic appearance of parks for the enjoyment of park visitors and lessen potential threats to the health and safety of park visitors caused by the opportunistic dumping of waste in state parks.

There will be no adverse economic effect on small businesses, micro businesses, or persons required to comply with the amendments as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the amendments as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to Wes Masur, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8001 (e-mail: wes.masur@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, §13.101, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; and under §13.102, which authorizes the commission to promulgate regulations governing the conservation, preservation, and use of state property whether natural features or constructed facilities; the

abusive, disruptive, or destructive conduct of persons, the activities of park users, and conduct which endangers the health or safety of park users or their property.

The proposed amendments affect Parks and Wildlife Code, Chapter 13.

§59.131. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (7) (No change.)

(8) Garbage--Trash, refuse, rubbish, household waste, medical waste, rubble, spoil, construction debris, yard clippings, offal, or any other similarly useless, noxious, or offensive material.

(9) [(8)] Motorcycle--A two-wheeled vehicle propelled by an internal combustion engine to include motor bikes, mini-bikes, and trail bikes.

(10) [(9)] Night--Any time from 1/2 hour after sunset to 1/2 hour before sunrise.

(11) [(10)] Person--Natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons acting individually, or by an agent, servant, or employee.

(12) [(11)] Plant life--All plants including trees, dead or downed wood, shrubs, vines, wildflowers, grass, sedge, fern, moss, lichen, fungus, or any other member of the plant family.

(13) [(12)] Public place--Any place to which the public or a substantial group of the public has access. In the state park system areas that are not considered a public place are cabins, screened shelters, recreation halls, group barracks, lodges, tents, campers, trailers, motor homes, or any vehicle(s) that are used as camping equipment.

(14) [(13)] Public nudity--To disrobe or appear nude in public. Females are considered to be disrobed when their breasts below the top of the areola are exposed except when nursing a baby.

(15) [(14)] State park--A park, park site, historical park, natural area, recreational area or fishing pier, administered, operated, or managed by the department.

(16) [(15)] Unattended pet--A pet that is unaccompanied or not under immediate control. Pets tied or secured outside of camping equipment or buildings are not considered under immediate control.

(17) [(16)] Wildlife--Any wild animal, bird, amphibian, reptile, fish, shellfish, aquatic life, or invertebrate.

§59.134. Rules of Conduct in Parks.

(a) - (ee) (No change.)

(ff) Garbage.

(1) It is an offense for any person to discard, deposit, or dump garbage in a state park, except for:

(A) garbage generated inside the park during the course of park visitation; or

(B) an amount of garbage consistent with what ordinarily would accumulate in a vehicle in the course of a day's travel.

(2) It is an offense for any person to dispose of garbage except in a receptacle provided for that use or as may otherwise be specifically authorized by department personnel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2005.
TRD-200502352
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: July 24, 2005
For further information, please call: (512) 389-4775



PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.4

The School Land Board (Board) proposes amendments to §155.4 relating to Permits. The permits authorize continued use of previously unauthorized structures on coastal public lands in accordance with Texas Natural Resources Code §§33.119 - 33.131. The amendment to subsection (c)(1)(A) of §155.4 conforms the rule to statutory changes to Texas Natural Resources Code §33.124 as amended by the 79th Legislature in H.B. 708 effective May 13, 2005. The amendment to subsection (c)(1)(A) of §155.4 removes language that prohibited the Board from issuance of permits for the continued use of existing structures that came to be located within 1,000 feet of any federal or state wildlife sanctuary or refuge or any government owned park bordering on coastal public lands, with the creation or expansion of such refuges or government owned parks. In addition, the restriction on cabin structures within 1,000 feet of privately owned littoral property is amended to apply only to residential littoral property.

Mr. Rene Truan, Deputy Commissioner and Director for the Asset Inspection Division, has determined that for the first five-year period that the proposed rulemaking is in effect there will be no fiscal implications for local government. Mr. Truan determined that there will be fiscal implications for the state as a result of enforcing the rules as amended. It is estimated that the Land Office will experience an increase in revenue in the amount of approximately \$24,300 per year for the renewal of cabin structure permits that previously could not be renewed because of the previous statutory prohibition.

Mr. Truan also has determined that for each year of the first five-year period the proposed rulemaking is in effect, the public benefit will be that the authorization to reissue permits for such structures will enhance the ability of the General Land Office (Land Office) to enforce compliance of such structures with the Board's regulations related to waste disposal and derelict structures, as well as compliance with applicable policies of the coastal management program in 31 TAC §501.24(a)(6) requiring that such structures be constructed in a manner that: (A) does not significantly interfere with public navigation; (B) does not significantly interfere with the natural coastal processes which supply sediments to shore areas or otherwise exacerbate erosion of shore areas; and (C) avoids and otherwise minimizes shading of critical areas and other adverse effects. In addition, federal and state agencies have expressed interest in acquiring the use of cabin structures in close proximity to wildlife sanctuaries or refuges for law enforcement, research, education, and outreach efforts. Mr. Truan has determined that there will be no additional cost of compliance for small or large businesses since

the structures for which permits may be obtained may be used only for noncommercial, recreational purposes. Those individuals who chose to renew cabin structure permits authorized by this amendment will experience estimated costs of \$500 per year over a five year period as a result of implementing the amended sections.

The Board has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to the Government Code, §2001.022.

The Board has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §155.4 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.119 - 33.131 providing that the Board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land if the use is sought by one who is claiming a interest in the structure but is not incident to the ownership of littoral property.

The Board has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The Board has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the Board has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment. The Board has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the cabin structures are the property of the state.

The Board has reviewed these proposed actions for consistency with the applicable goals and policies Coastal Management Program (CMP) and regulations of the Coastal Coordination Council (Council). Since the requests for renewal of structure cabin permits must meet the same criteria as set forth in subsection (c) of §155.4 for Board approval, as well as the policies of the CMP in 31 TAC §501.24(a)(6), the Board has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to council members in order to provide them an opportunity to provide comment on the consistency of the proposed new rules during the comment period.

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Ms. Deborah Cantu, *Texas Register* Liaison, Texas General

Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to deborah.cantu@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed under Texas Natural Resources Code, §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Texas Natural Resources Code, Chapter 33.

Texas Natural Resources Code, §§33.119 - 33.131, providing that the Board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land, are affected by the proposed amendments.

§155.4. *Permits.*

(a) - (b) (No change).

(c) Criteria. Permits granted pursuant to this section shall be subject to the following policies, provisions, and conditions, in addition to those generally applicable to the Act.

(1) The board may not:

(A) grant any permit authorizing the continued use of any structure located within 1,000 feet of [:]

~~[(i)]~~ privately owned littoral residential property, without the written consent of the littoral owner;

~~[(ii)]~~ any federal or state wildlife sanctuary or refuge;]

~~[(iii)]~~ any federal, state, county, or city park bordering on coastal public lands;]

(B) grant any permit which would be in violation of the public policy of this state as expressed in these sections and regulations;

(C) grant any permit for any structure not in existence on August 27, 1973;

(D) grant more than one permit per person, immediate family, organization, company, or group; or

(E) grant any permit for dilapidated or derelict structures. A structure is considered "dilapidated" or "derelict" if it is decayed, deteriorated, structurally unsound, fallen into partial ruin, or has been abandoned either through neglect or misuse. This provision shall not prohibit the issuance of a new contract for a previously abandoned structure, provided that the permit holder agrees to rebuild or relocate the structure within one year of contract issuance.

(2) - (4) (No change).

(d) - (p) (No change).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2005.

TRD-200502392

Trace Finley

Policy Director, General Land Office

School Land Board

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 305-8598



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.77

The Texas Department of Public Safety proposes new §35.77, concerning Termination of Incomplete Applications. New §35.77 provides a mechanism for the termination of incomplete applications within a definite time period. Additionally, the new section provides a mechanism for the applicant to request a hearing from the Private Security Board for the application to be processed in the event the applicant is unable to provide the necessary information to complete the application.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a timely manner for the Private Security Bureau to terminate an incomplete application or allow an applicant the opportunity to have a hearing before the Private Security Board, if the applicant is not able to provide the required information, to determine if the application may proceed without the complete information. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Cliff Grumbles, Manager, Private Security Bureau, P.O. Box 4143, MSC-0241, Austin, Texas 78765-4143, (512) 424-7711.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, Chapter 1702 are affected by this proposal.

§35.77. Termination of Incomplete Applications.

(a) Applications must be complete and legible. If an application is not legible or not complete, the bureau will notify the applicant of any apparent deficiency. The applicant will have 90 days from the date of notice to amend the application or provide complete information. Upon request of the applicant, the bureau may extend the period to amend the application for one additional 90-day period. If the applicant is unable to provide information needed to complete the application, the applicant may request a hearing before the board to determine whether the application may proceed without complete information. After the period to amend has expired, if the applicant has not provided the required information or requested a hearing on the application, the application process will be terminated. An application will not be terminated while a hearing request under this section is pending.

(b) If an applicant fails to provide all required application materials, or fails to respond to a request by the bureau for additional information necessary to process the application, the application will be terminated under the process set out in subsection (a) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2005.

TRD-200502384

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: July 24, 2005

For further information, please call: (512) 424-2135

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR

POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER J. OPERATIONAL CONTROLS FOR MOTOR VEHICLES

DIVISION 3. SWITCHYARD LOCOMOTIVE IDLING LIMITATIONS

30 TAC §§114.520, 114.522, 114.526, 114.529

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new sections, submitted by the Texas Commission on Environmental Quality have been automatically withdrawn. The new sections as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11267).

Filed with the Office of the Secretary of State on June 13, 2005.

TRD-200502390

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.4

The Texas Residential Construction Commission (commission) adopts new §300.4, relating to the establishment of an agency sick leave pool, with no changes to the proposed text as published in the April 29, 2005, issue of the *Texas Register* (30 TexReg 2489).

The new section establishes an agency sick leave pool.

The commission received no comments on the new section.

The section is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; and under the specific authority provided in Government Code §661.002, which grants a state agency the authority to establish a sick leave pool program.

Cross Reference to Statutes: Title 16, Property Code §408.001 and Government Code §661.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2005.

TRD-200502349

Susan Durso

General Counsel

Texas Residential Construction Commission

Effective date: June 28, 2005

Proposal publication date: April 29, 2005

For further information, please call: (512) 475-0595



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §73.100

The Texas Department of Licensing and Regulation ("Department") adopts amendments to an existing rule at 16 Texas Administrative Code, §73.100 regarding technical requirements in the electricians program as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1895), without changes, and will not be republished.

This rule is necessary to comply with the provisions of Texas Occupations Code, §1305.101(a)(2) which requires the Commission to adopt as the electrical code for the state the National Electric Code after publication every three years. The most recent version published is the 2005 version adopted by the rule as amended.

The Department drafted and distributed the proposed rule to persons internal and external to the agency in addition to publishing it in the *Texas Register*. Two comments were received. Both were from representatives of municipalities objecting to the cost the municipalities will incur in making changes to their electrical codes. The City Planner of Copperas Cove, Texas pointed out that purchase of new code books will cost the city \$455. He also noted that the new code would require review by staff to identify changes, and review by the city's Electrical Board to prepare to respond to questions that may arise concerning changes. Another commenter, who did not identify her position on the municipality she represents, stated that the ordinance adoption process to give the rule effect is not without cost to the municipality.

The Commission is required to adopt the revised National Electrical Code after its publication every three years by the National Fire Protection Association, Occupations Code, §1305.101(a)(2). The 2005 version was published in August 2004 for use in 2005 and the following years. The Electrical Safety and Licensing Advisory Board recommended that the 2005 Code be adopted effective July 1, 2005, to provide licensees with adequate time to acquaint themselves with the amendments.

The commenters suggested that the Commission should review the Code and identify changes. The revised code is printed with changes identified. The costs identified by the commenters are costs that municipalities exercising inspection authority for electrical projects would reasonably be expected to incur without the rule being adopted. Some, if not most, electricians will use the most recent codes, even if a city has not adopted them which means that inspectors also need the most recent version in order to address work done to meet that code. Costs to purchase codes should not be affected by the rule, though it may affect timing of such costs. The rule is proposed to comply with statutory requirements and to establish timing for use of the 2005 code by licensees. The commenters did not propose any changes to the proposed rule; they only objected to the department's assertion that the rule amendment would not impose costs on local governments. The rule is not changed as a result of the comments.

The amendment is adopted under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and Texas Occupations Code, Chapter 1305, §1305.101(a)(2).

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2005.

TRD-200502394

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: July 3, 2005

Proposal publication date: April 1, 2005

For further information, please call: (512) 463-7348



CHAPTER 80. LICENSED COURT INTERPRETERS

16 TAC §80.80

The Texas Department of Licensing and Regulation ("Department") adopts amendments to an existing rule at Title 16, Texas Administrative Code, §80.80 regarding a duplicate license, and examination and other fees for licensed court interpreters as published in the April 29, 2005, issue of the *Texas Register* (30 TexReg 2489), without changes, and will not be republished.

The amendments are needed to make the duplicate license fee consistent with other Department duplicate fees and to clarify the fees for examinations. The amendments reduce the duplicate license fee from \$50 to \$25, clarify the fees for licensed court interpreter examinations, and eliminate the fees for changing name and address and for obtaining additional license endorsements.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. No public comments were received.

The amendment is adopted under Texas Government Code, Chapter 57, §57.045 which authorizes the Commission to set license and examination fees for the licensed court interpreter program and Texas Occupations Code, §51.202 which directs the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs or activities regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Government Code, Chapter 57 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.

Executive Director

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For further information, please call: (512) 463-7348



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Commission adopts the repeal of §57.383, concerning Permit Fee, amendments to §§57.111, 57.113, 57.114, 57.117, 57.134, and 57.135, concerning Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants; §57.156, concerning Mussels and Clams; §57.500, concerning Marking of Vehicles; §57.921, concerning Scientific Areas; and §§57.930, 57.932 and 57.934, concerning Aquatic Vegetation Management. Section 57.113 is adopted with changes to the proposed text as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 1023). The repeal of §57.383 and the amendments to §§57.111, 57.114, 57.117, 57.134, 57.135, 57.156, 57.500, 57.921, 57.930, 57.932 and 57.934 are adopted without change and will not be republished.

The change to §57.113, concerning Exceptions, adds subsection (m) to clarify that any person may possess water spinach solely for the purpose of personal consumption.

The repeal and amendments are necessary as a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule as necessary and appropriate. As a result of the review process, which included surveys and public hearings, the department determined that modifications should be made to simplify regulations, improve the efficiency and effectiveness of programs, and help users better understand the intent in the application of these programs. As a result of the review, the department has determined that rulemaking is necessary to correct outdated references, naming conventions, citations, and terminology, as well as to make existing provisions clearer and more user friendly.

In general, the amendments eliminate obsolete department program references and add clarity to activities that have evolved since the last review of the chapter.

The repeal of §57.383, concerning Permit Fee, is necessary because a previous rulemaking consolidated all provisions that establish fees in Chapter 53, concerning Finance.

The amendment to §57.111, concerning Definitions, amends the definition of penaeid shrimp family members by adding the genera *Fenneropenaeus*, *Marsupenaeus*, and *Melicertus*; and amends the definition of oyster family members by adding all species of *Ostreidae* except *Crassostrea virginica* and *Ostrea equestris*, and removing *Crassostrea gigas* because of changing naming conventions, and the addition of exotic species that are not currently being used in Texas mariculture but known to produce problems in other states. No impact is expected

to Texas mariculture from this change. Also, reference to the Texas Natural Resource Conservation Commission is being changed to reflect the current name of that agency, the Texas Commission on Environmental Quality.

The amendment to §57.113, concerning Exceptions, clarifies that the rules are not intended to be applied to individually shucked oysters of exotic species. The amendment also adds water spinach to the list of species that may be grown under permit. Water spinach (*Ipomoea aquatica*) was originally included on the list of harmful or potentially harmful species because of its rapid growth rate and consequent potential for invasiveness. However, the department recently became aware that it is a very highly prized food item in some communities and has been cultivated in Texas for at least 15 years without incident. Investigations indicated it has not escaped cultivation. The amendment also removes language authorizing the department to stock planktivorous fish. The amendment is necessary because the program has been completed. Similarly, the amendment eliminates provisions that grandfather certain exotic species permits, which is necessary because the permits no longer exist.

The amendment to §57.114, concerning Health Certification of Exotic Shellfish, clarifies that inspections are required before the harvesting of shellfish and any discharge of water because the two activities often occur at the same time. With respect to facility inspections, the amendment allows for inspections of portions of a facility when inspection of every pond in a facility is not necessary. The amendment also lengthens the mandatory notification period from 72 hours to 14 days. The change is necessary to better facilitate and better coordinate inspections for all concerned parties. The requirements for third-party samples of ponds submitted for analysis are also changed from 10 days to 14 days in order to maintain consistency with sampling protocols.

The amendment to §57.117, concerning Exotic Species Permit: Fee and Application Requirements, removes the provisions that establish fees. The amendment is necessary because an earlier rulemaking consolidated all provisions establishing fees in Chapter 53, concerning Finance. Also, outdated references to the precursor agency of the Texas Commission on Environmental Quality are updated.

The amendments to §57.134, concerning Wastewater Discharge Authority, and §57.135, concerning Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Natural Resource Conservation Commission and the Texas Department of Agriculture, also update references to the precursor agency of the Texas Commission on Environmental Quality.

The amendment to §57.156, concerning Definitions, adds the definitions of 'Prohibited Area' and 'Restricted Area.' The new definitions are restated definitions taken from Texas Department of State Health Services rules relating to oyster harvest. The amendment is necessary for the convenience of the public, as these definitions are the subject of frequent questions. The addition of the definitions to the department's rules should simplify searches.

The amendment to §57.500, concerning Marking of Vehicles, is amended to more accurately reflect the intent of Parks and Wildlife Code, §66.014, which provides the authority for rulemaking in this area. The department wishes to ensure that all vehicles used to transport aquatic products for commercial purposes be marked, and not just those that transport "fish," as stated in

the current rule. The amendment is necessary to assure that the department is able to enforce statutes and regulations concerning the transport of aquatic products. The amendment also eliminates a reference to 'arabic letters,' which obviously is not the intent of the rule, and clarifies that legend, "FISH" be printed in capital letters.

The amendment to §57.921, concerning Redfish Bay State Scientific Areas, extends the termination date for the Redfish Bay Scientific Area from June 30, 2005 to June 30, 2010 and more accurately defines the area intended to be included in this area. The amendment is necessary because the department has determined that additional time is needed to study the impacts of propeller scarring on seagrass communities, and because technological advances have made it possible to more accurately delineate the boundaries of the scientific area.

The amendments to §57.930, concerning Definitions, §57.932, concerning State Aquatic Vegetation Plan, and §57.934, concerning Local Aquatic Vegetation Plan, update references to the precursor agency of the Texas Commission on Environmental Quality.

The repeal of §57.383 will function by eliminating a superfluous regulation.

The amendment to §57.111 will function by making definitions more precise, by eliminating definitions that are no longer applicable, and by adding definitions for exotic species that are subject to the regulations of the department.

The amendment to §57.113 will function by exempting individually shucked exotic species of oysters from the rules, by allowing water spinach to be grown under permit, and by removing obsolete language.

The amendment to §57.114 will function by requiring inspections prior to any harvesting of shellfish or discharge of water, by allowing inspections of portions of a facility, by lengthening the mandatory notification period, and by allowing third-party pond samples to be submitted up to 14 days prior to the first discharge.

The amendments to §§57.117, 57.134, and 57.135 will function by eliminating obsolete and redundant references.

The amendment to §57.156 will function by adding helpful definitions for the convenience of the public.

The amendment to §57.500 will function by making regulatory language more accurate.

The amendment to §57.921 will function by setting a new termination date for the Redfish Bay Scientific Area and by more accurately defining the boundaries of the area.

The amendments to §§57.930, 57.932, and 57.934 will function by updating references.

The department received no comments concerning adoption of the proposed repeal and amendments.

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL EXOTIC FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §§57.111, 57.113, 57.114, 57.117, 57.134, 57.135

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal

life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life; Chapter 12, which provides authority to investigate pollution liable to impact fish or wildlife, to create a noxious vegetation program, and to regulate fish, shellfish, and aquatic plants; Chapter 66, which provides authority to regulate harmful or potentially harmful exotic fish, shellfish, and aquatic plants, to prescribe identification standards for vehicles transporting aquatic products, and rules governing the introduction of fish, shellfish, and aquatic plants; Chapter 67, which authorizes the commission to establish a fee for permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife; Chapter 76, which provides authority to regulate the taking, possession, purchase, and sale of oysters; and Chapter 78, which provides authority to regulate the taking, possession, purchase and sale of mussels, clams, and crabs.

§57.113. *Exceptions.*

(a) A person who holds a valid Exotic Species Permit issued by the department may possess, propagate, sell and transport to the permittee's private facilities exotic harmful or potentially harmful fish, shellfish and aquatic plants only as authorized in the permit provided the harmful or potentially harmful exotic species are to be used exclusively:

(1) as experimental organisms in a department approved research program; or

(2) for exhibit in a public aquarium approved for display of harmful or potentially harmful exotic fish, shellfish and aquatic plants.

(b) A person may possess exotic harmful or potentially harmful fish or shellfish, exclusive of grass carp, without a permit, if the intestines of the fish or shellfish have been removed, or in the case of oysters, if the oysters have been shucked or otherwise removed from their shells.

(c) A person may possess grass carp harvested from public waters that have not been permitted for triploid grass carp, without a permit, if the intestines have been removed.

(d) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell triploid grass carp (*Ctenopharyngodon idella*), silver carp (*Hypophthalmichthys molitrix*), triploid black carp (*Mylopharyngodon piceus*, also commonly known as snail carp), bighead carp (*Aristichthys/Hypophthalmichthys nobilis*), blue tilapia (*Tilapia aurea*), Mozambique tilapia (*Tilapia mossambica*), Nile tilapia (*Tilapia nilotica*), water spinach (*Ipomoea aquatica*), or hybrids between the three tilapia species, unless otherwise provided by conditions of the permit or these rules.

(e) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport, or sell Pacific white shrimp (*Litopenaeus vannamei*) provided the exotic shellfish meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(f) An operator of a wastewater treatment facility in possession of a valid exotic species permit issued by the department may possess and transport permitted exotic species to their facility only for the purpose of wastewater treatment.

(g) A person may possess Mozambique tilapia in a private pond subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice).

(h) The holder of a valid triploid grass carp permit issued by the department may possess triploid grass carp as provided by conditions of the permit and these rules.

(i) A licensed retail or wholesale fish dealer is not required to have an exotic species permit to purchase or possess:

(1) live individuals of species or hybrids of species listed in subsection (d) of this section held in the place of business, unless the retail or wholesale fish dealer propagates one or more of these species. However, such a dealer may sell or deliver these species to another person only if the intestines or head of the fish are removed; or

(2) Live Pacific white shrimp (*Litopenaeus vannamei*) held in the place of business if the place of business is not located within the Harmful or Potentially Harmful Exotic Species Exclusion Zone. However, such a dealer may only sell or deliver this species to another person if the shrimp are dead and packaged on ice or frozen.

(j) The department is authorized to stock triploid grass carp into public waters in situations where the department has determined that there is a legitimate need, and when stocking will not affect threatened or endangered species, coastal wetlands, or specific management objectives for other important species.

(k) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (*Litopenaeus stylirostris*) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(l) An operator of a mechanical plant harvester in possession of a valid exotic species permit issued by the department may remove and dispose of prohibited plant species from public or private waters only by means authorized in the permit.

(m) Any person may possess Water spinach (*Ipomoea aquatica*) for personal consumption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2005.

TRD-200502361

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



SUBCHAPTER B. MUSSELS AND CLAMS

31 TAC §57.156

The amendments are adopted under the authority of Parks and Wildlife Code Chapter 61, which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life; and under Chapter 78, which provides authority to

regulate the taking, possession, purchase, and sale of mussels, clams, and crabs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



SUBCHAPTER E. PERMITS TO SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

31 TAC §57.383

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish a fee for permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty

Chief of Staff

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For further information, please call: (512) 389-4775



SUBCHAPTER G. MARKING OF VEHICLES

31 TAC §57.500

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 66, which provides the commission with authority to prescribe requirements for identification of vehicles transporting aquatic products.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



SUBCHAPTER K. SCIENTIFIC AREAS

31 TAC §57.921

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 81, which provides the authority to promote and establish a state system of scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty

Chief of Staff

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For further information, please call: (512) 389-4775



SUBCHAPTER L. AQUATIC VEGETATION MANAGEMENT

31 TAC §§57.930, 57.932, 57.934

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 12, which provides authority to investigate pollution liable to impact fish or wildlife and create a noxious vegetation program, regulate fish, shellfish, and aquatic plants; and Chapter 66, which provides authority to regulate exotic harmful or potentially harmful fish, shellfish, and aquatic plants, identification of vehicles transporting aquatic products, and the introduction of fish, shellfish, and aquatic plants to public waters.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chief of Staff

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING-- PAYROLL

34 TAC §5.43

The Comptroller of Public Accounts adopts new §5.43, concerning payments for accrued vacation time. The new section is adopted without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2374). A brief description of the new section follows.

Subsection (a) defines important terms used throughout the section.

Subsection (b) specifies the meaning of "continuous state employment." State law states that a state employee who separates from state employment must have accrued six months of "continuous state employment" before the employee is entitled to be paid for the employee's accrued vacation time.

Subsection (c) specifies the meaning of "separation from state employment." State law states that a state employee is entitled to be paid for the employee's accrued vacation time only if the employee has separated from state employment.

Subsection (d) specifies which state agency is responsible for paying a state employee for the employee's accrued vacation time.

Subsection (e) specifies the method for determining how many hours of accrued vacation time must be paid to a state employee. Subsection (e)(1) requires the employee's time to be allocated over the workdays following the effective time of the employee's separation from state employment until the balance is allocated completely. Subsection (e)(2) specifies what happens when a holiday is incurred during the allocation period. Subsection (e)(2) makes it clear that the inclusion of a workday in the allocation does not cause any individual to be a state employee on that workday for any purpose.

Subsection (f) specifies the method for computing the amount of a payment for accrued vacation time. Subsection (f)(1) covers when vacation time is allocated over only one month. Subsection (f)(2) covers when vacation time is allocated over more than one month.

Subsection (g) specifies the method for determining the applicable rate of compensation when computing the amount of a payment for accrued vacation time. Subsection (g)(1) lists the items that must be included when determining the rate. Subsection (g)(2) covers employees who are not hourly. Subsection (g)(3) covers employees with contracts to work fewer than twelve months each fiscal year.

Subsection (h) covers a state employee's remaining on the payroll to exhaust the employee's accrued vacation time balance instead of the employee being paid for that time in a lump sum.

Subsection (i) specifies the data that must be included in the payroll detail submitted to the comptroller to make a payment for accrued vacation time.

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code, §661.068 and §661.094, which authorize the comptroller to adopt rules to administer payments for accrued vacation time.

The new section implements Government Code, Chapter 661, Subchapters C and D.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200502327

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: June 28, 2005

Proposal publication date: April 22, 2005

For further information, please call: (512) 475-0387



34 TAC §5.44

The Comptroller of Public Accounts adopts new §5.44, concerning payments for accrued vacation and sick leave to the estates of deceased state employees. The new section is adopted without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2377). A brief description of the new section follows.

Subsection (a) defines important terms used throughout the section.

Subsection (b) specifies the meaning of "continuous state employment." State law states that a deceased state employee must have accrued six months of "continuous state employment" before the employee's estate is entitled to be paid for the employee's accrued vacation and sick leave.

Subsection (c) specifies which state agency is responsible for paying a state employee's estate for the employee's accrued vacation and sick leave.

Subsection (d) specifies the method for determining how many hours of accrued vacation and sick leave must be paid to a state employee's estate. Subsection (d)(1) requires the employee's leave to be allocated over the workdays following the time of the employee's death until the balance is allocated completely. Subsection (d)(2) specifies what happens when a holiday is incurred during the allocation period. Subsection (d)(3) makes it clear that the inclusion of a workday in the allocation does not cause any individual to be a state employee on that workday for any purpose.

Subsection (e) specifies the method for computing the amount of a payment for accrued vacation and sick leave. Subsection (e)(1) covers when the leave is allocated over only one month. Subsection (e)(2) covers when the leave is allocated over more than one month.

Subsection (f) specifies the method for determining the applicable rate of compensation when computing the amount of a payment for accrued vacation and sick leave. Subsection (f)(1) lists the items that must be included when determining the rate. Subsection (f)(2) covers employees who were not hourly. Subsection

(f)(3) covers employees who had contracts to work fewer than twelve months each fiscal year.

Subsection (g) specifies the data that must be included in the payroll detail submitted to the comptroller to make a payment for accrued vacation and sick leave.

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code, §661.038, which authorizes the comptroller to adopt rules to administer payments for accrued vacation and sick leave.

The new section implements Government Code, Chapter 661, Subchapter B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

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Proposal publication date: April 22, 2005

For further information, please call: (512) 475-0387

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Review

Texas Parks and Wildlife Department

Title 31, Part 2

The Texas Parks and Wildlife Commission adopts the rules review of Chapter 57, Fisheries, as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11751). As a result of the review, the commission readopted the contents of the following sections without change, except as noted. This completes the rule review of Chapter 57. No comments were received concerning readoption of the rules.

CHAPTER 57. FISHERIES

Subchapter A. Harmful or Potentially Harmful Exotic Fish, Shellfish, and Exotic Plants

- §57.111. Definitions.
- §57.112. General Rules.
- §57.113. Exceptions.
- §57.114. Health Certification of Exotic Shellfish.
- §57.115. Transportation of Live Exotic Species.
- §57.116. Exotic Species Transport Invoice.
- §57.117. Exotic Species Permit: Fee and Application Requirements.
- §57.118. Exotic Species Permit Issuance.
- §57.119. Exotic Species Permit: Requirements for Permits.
- §57.120. Exotic Species Permit: Expiration and Renewal.
- §57.121. Exotic Species Permit-Amendment.
- §57.122. Appeal.
- §57.123. Exotic Species Permit Reports.
- §57.124. Triploid Grass Carp; Sale, Purchase.
- §57.125. Triploid Grass Carp Permit; Application, Fee.
- §57.126. Triploid Grass Carp Permit; Terms of Issuance.
- §57.127. Triploid Grass Carp Permit; Denial.
- §57.128. Exotic Species Permits, Triploid Grass Carp Permits; Revocation.
- §57.129. Exotic Species Permit: Private Facility Criteria.
- §57.130. Exotic Species Interstate Transport Permit.
- §57.131. Exotic Species Interstate Transport Permit: Application and Issuance.

§57.132. Exotic Species Interstate Transport Permit: Permittee Requirements.

§57.133. Exotic Species Interstate Transport Permit: Expiration and Renewal.

§57.134. Wastewater Discharge Authority.

§57.135. Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Natural Resource Conservation Commission, and the Texas Department of Agriculture.

§57.136. Penalties.

Note: The contents of §§57.111, 57.113, 57.114, 57.117, 57.134, and 57.135 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

Subchapter B. Mussels and Clams.

§57.156. Definitions.

§57.157. Mussels and Clams.

§57.158. Penalties.

Note: The contents of §57.156 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

Subchapter C. Introduction of Fish, Shellfish, and Aquatic Plants.

§57.251. Definitions.

§57.252. Prohibited Acts.

§57.253. Permit Exemptions.

§57.254. Permit Application; Validity.

§57.255. Permit Denial.

§57.256. Appeal.

§57.257. Penalties.

Subchapter D. Commercially Protected Finfish.

§57.372. Packaging Requirements.

§57.373. Package Labels.

§57.374. Delegation of Authority.

§57.375. Exclusive Economic Zone Regulations.

Subchapter E. Permits to Sell Nongame Fish Taken from Public Fresh Water

§57.377. Definitions.

§57.378. Nongame Fishes Covered by These Rules.

§57.379. Prohibited Acts.

§57.380. Permit Application.

§57.381. Permit Specifications and Requirements.

§57.382. Harvest and Sales Reports.

§57.384. Permit Denial.

§57.385. Appeal.

§57.386. Penalties.

Note: Section 57.383 was repealed as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

Subchapter F. Collection of Broodfish from Public Waters.

§57.391. Definitions.

§57.392. General Rules.

§57.394. Broodfish Collection; Notification.

§57.395. Broodfish Permits; Fees, Terms of Issuance.

§57.396. Broodfish Permit; Expiration.

§57.397. Broodfish Permit; Revocation.

§57.398. Permit Denial.

§57.399. Appeal.

§57.400. Reports.

§57.401. Restitution for Broodfish.

Subchapter G. Marking of Vehicles.

§57.500. Marking of Vehicles.

Note: The contents of §57.500 were amended as a result of the review. The Notice of Adoption appears in the Adopted section of this issue of the *Texas Register*.

Subchapter H. Fishery Management Plans

§57.691. Fishery Management Plans.

Subchapter I. Consistency with Federal Regulations in the Exclusive Economic Zone

§57.801. Powers of the Executive Director.

Subchapter J. Fish Pass Proclamation

§57.901. Prohibited Acts.

Subchapter K. Scientific Areas

§57.920. Nine-Mile Hole State Scientific Area.

§57.921. Redfish Bay State Scientific Area.

Note: The contents of §57.920 and §57.921 were amended as a result of the review. The Notice of Adoption appears in the Adopted section of this issue of the *Texas Register*.

Subchapter L. Aquatic Vegetation Management

§57.930. Definitions.

§57.931. State Aquatic Vegetation Plan Applicability.

§57.932. State Aquatic Vegetation Plan.

§57.933. Adoption and Applicability of Local Aquatic Vegetation Plans.

§57.934. Local Aquatic Vegetation Plan.

§57.936. Recordkeeping.

Note: The contents of §§57.930, 57.932, and 57.934 were amended as a result of the review. The Notice of Adoption appears in the Adopted section of this issue of the *Texas Register*.

This review is pursuant to the Texas Government Code, §2001.039.

TRD-200502366

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Filed: June 9, 2005

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Notice--Procurement of Services by Area Agencies on Aging

The Department of Aging and Disability Services' Access and Intake--Area Agencies on Aging Section oversees the delivery of Older Americans Act services for individuals age 60 and older, their family members, and other caregivers through contracts with Area Agencies on Aging located throughout the state. These 28 Area Agencies on Aging are currently seeking qualified entities to provide services, such as: Congregate Meals, Home Delivered Meals, Transportation, Personal

Assistance, Homemaker, and Caregiver, as well as other related services.

Parties interested in providing services must contact the Area Agency on Aging operating within their service area to obtain information relating to vendor open enrollment, requests for proposals (RFP), the contracting process, the types of services being considered, and the actual funding available.

Identified in the comprehensive list is all Area Agencies on Aging, contact information, addresses, telephone numbers, and service areas:

Area Agencies on Aging

83101-Alamo AAA

Mr. Israel Zuniga, Director
8700 Tesoro, Suite 700
San Antonio, Texas 78217
Ph: 210-362-5200 1-866-231-4922
Fax: 210-225-5937

Executive Director

Alamo Area Council of Governments
Mr. Al J. Notzon, III

Counties Served: Atascosa, Bandera, Comal, Frio,
Gillespie, Guadalupe; Karnes, Kendall, Kerr,
Medina, Wilson

83102-Ark-Tex AAA

Ms. Judy Mattson, Director
P. O. Box 5307
Texarkana, Texas 75505-5307
Ph: 903-832-8636 1-800-372-4464
Fax: 903-832-3441

Executive Director

Ark-Tex Council of Governments
Mr. L.D. Williamson

Counties Served: Bowie, Cass, Delta, Franklin,
Hopkins, Lamar, Morris, Red River, Titus

83103-Bexar County AAA

Ms. Deborah Billa, Director
8700 Tesoro, Suite 700
San Antonio, Texas 78217
Ph: 210-362-5268 1-800-960-5201
Fax: 210-225-5937

Executive Director

Alamo Area Council of Governments
Mr. Al J. Notzon, III

Counties Served: Bexar

83104-Brazos Valley AAA

Mr. Ronnie Gipson, Director
P. O. Box 4128
Bryan, Texas 77805-4128
Ph: 979-595-2800 1-800-994-4000
Fax: 979-595-2810

Executive Director

Brazos Valley Council of Governments
Mr. Tom M. Wilkinson, Jr.

Counties Served: Brazos, Burleson, Grimes, Leon,
Madison, Robertson, Washington

83105-Capital AAA

Ms. Glenda Rogers, Director
2512 South IH35, Suite 340
Austin, Texas 78704
Ph: 512-916-6062 1-888-622-9111
Fax: 512-916-6042

Executive Director

Capital Area Council of Governments
Ms. Betty Voights

Counties Served: Bastrop, Blanco, Burnet,
Caldwell, Fayette, Hays, Lee, Llano, Travis,
Williamson

83106-Central Texas AAA

Mr. H. Richard McGhee, Director
302 East Central Avenue
Belton, Texas 76513
Ph: 254-939-1886 1-800-447-7169
Fax: 254-939-0087

Executive Director

Central Texas Council of Governments
Mr. Jim Reed

Counties Served: Bell, Coryell, Hamilton,
Lampasas, Milam, Mills, San Saba

83107-Coastal Bend AAA

Ms. Betty Lamb, Director
P. O. Box 9909
Corpus Christi, Texas 78469
Ph: 361-883-3935 1-800-817-5743
Fax: 361-883-5749

Executive Director

Coastal Bend Council of Governments
Mr. John P. Buckner

Counties Served: Aransas, Bee, Brooks, Duval,
Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak,
McMullen, Nueces, Refugio, San Patricio

83108-Concho Valley AAA

Ms. Betty Ford, Director
4850 Knickerbocker Rd.
San Angelo, Texas 76904
Ph: 325-223-5704 1-877-944-9666
Fax: 325-223-8233

Executive Director

Concho Valley Council of Governments
Mr. Jeffrey K. Sutton

Counties Served: Coke, Concho, Crockett, Irion,
Kimble, Mason, McCulloch, Menard, Reagan,
Schleicher, Sterling, Sutton, Tom Green

83109-Dallas County AAA

Ms. Monita McGhee, Director
1349 Empire Central, Ste. 400
Dallas, Texas 75247
Ph: 214-871-5065 1-800-548-1873
Fax: 214-871-7442

Executive Director

Community Council of Greater Dallas
Ms. Martha Blaine

Counties Served: Dallas

83110-Deep East Texas AAA

Ms. Holly Anderson, Director
210 Premier Drive
Jasper, Texas 75951
Ph: 409-384-7614 1-800-435-3377
Fax: 409-384-6177

Executive Director

Deep East Texas Council of Governments
Mr. Walter Diggles

Counties Served: Angelina, Houston, Jasper,
Nacogdoches, Newton, Polk, Sabine, San
Augustine, San Jacinto, Shelby, Trinity, Tyler

83111-East Texas AAA

Mr. Claude I. Andrews, Director
3800 Stone Road
Kilgore, Texas 75662
Ph: 903-984-8641 1-800-442-8845
Fax: 903-984-4482

Executive Director

East Texas Council of Governments
Mr. Glynn Knight

Counties Served: Anderson, Camp, Cherokee,
Gregg, Harrison, Henderson, Marion, Panola,
Rains, Rusk, Smith, Upshur, Van Zandt, Wood

83112-Golden Crescent AAA

Ms. Cindy Cornish, Director
568 Big Bend Dr.
Victoria, Texas 77904
Ph: 361-578-1587 1-800-574-9745
Fax: 361-578-8865

Executive Director

Golden Crescent Regional Planning Commission
Ms. Cynthia Skarpa

Counties Served: Calhoun, De Witt, Goliad,
Gonzales, Jackson, Lavaca, Victoria

83113-Harris County AAA

Ms. Charlene Hunter-James, Director
8000 North Stadium Drive, 3rd. Floor
Houston, Texas 77054
Ph: 713-794-9001 1-800-213-8471
Fax: 713-794-9238

Executive Director

City of Houston
Stephen Williams

Counties Served: Harris

83114-Heart of Texas AAA

Ms. Donnis Cowan, Manager
300 Franklin Avenue
Waco, Texas 76701
Ph: 254-756-7822 1-866-772-9600
Fax: 254-756-0102

Executive Director

Heart of Texas Council of Governments
Mr. Ken Simons

Counties Served: Bosque, Falls, Freestone, Hill,
Limestone, McLennan

83115-Houston - Galveston AAA

Mr. Curtis M. Cooper, Manager
P. O. Box 22777
Houston, Texas 77227-2777
Ph: 713-627-3200 1-800-437-7396
Fax: 713-993-4578

Executive Director

Houston-Galveston Area Council
Mr. Jack Steele

Counties Served: Austin, Brazoria, Chambers,
Colorado, Fort Bend, Galveston, Liberty,
Matagorda, Montgomery, Walker, Waller,
Wharton

83116-Lower Rio Grande Valley AAA

Mr. Jose L. Gonzalez, Director
311 N. 15th Street
McAllen, Texas 78501-4705
Ph: 956-682-3481 1-800-365-6131
Fax: 956-682-8852

Executive Director

Lower Rio Grande Valley Development Council
Mr. Kenneth N. Jones

Counties Served: Cameron, Hidalgo, Willacy

83117-Middle Rio Grande AAA

Ms. Gloria Perez, Director
P. O. Box 1199
Carrizo Springs, Texas 78834
Ph: 830-876-3533 1-800-224-4262
Fax: 830-876-9415

Executive Director

Middle Rio Grande Development Council
Mr. Leodoro Martinez

Counties Served: Dimmit, Edwards, Kinney, La
Salle, Maverick, Real, Uvalde, Val Verde, Zavala

83118-North Central Texas AAA

Ms. Doni Van Ryswyk, Manager
P. O. Box 5888
Arlington, Texas 76005-5888
Ph: 817-695-9194 1-800-272-3921
Fax: 817-695-9274

Executive Director

North Central Texas Council of Governments
Mr. Mike Eastland

Counties Served: Collin, Denton, Ellis, Erath,
Hood, Hunt, Johnson, Kaufman, Navarro, Palo
Pinto, Parker, Rockwall, Somervell, Wise

83119-North Texas AAA

Ms. Rhonda K. Pogue, Director
P. O. Box 5144
Wichita Falls, Texas 76307-5144
Ph: 940-322-5281 1-800-460-2226
Fax: 940-322-6743

Executive Director

Nortex Regional Planning Commission
Mr. Dennis Wilde

Counties Served: Archer, Baylor, Clay, Cottle,
Foard, Hardeman, Jack, Montague, Wichita,
Wilbarger, Young

83120-Panhandle AAA

Ms. Jamie Goldston, Director
P. O. Box 9257
Amarillo, Texas 79105-9257
Ph: 806-331-2227 1-800-642-6008
Fax: 806-373-3268

Executive Director

Panhandle Regional Planning Commission
Mr. Gary Pitner

Counties Served: Armstrong, Briscoe, Carson,
Castro, Childress, Collingsworth, Dallam, Deaf
Smith, Donley, Gray, Hall, Hansford, Hartley,
Hemphill, Hutchinson, Lipscomb, Moore,
Ochiltree, Oldham, Parmer, Potter, Randall,
Roberts, Sherman, Swisher, Wheeler

83121-Permian Basin AAA

Ms. Sue Fielder, Director
P.O. Box 60660
Midland, Texas 79711-0660
Ph: 432-563-1061 1-800-491-4636
Fax: 432-567-1011

Executive Director

Permian Basin Regional Planning Commission
Mr. Gary Gaston

Counties Served: Andrews, Borden, Crane,
Dawson, Ector, Gaines, Glasscock, Howard,
Loving, Martin, Midland, Pecos, Reeves, Terrell,
Upton, Ward, Winkler

83122-Rio Grande AAA

Mr. Adan Dominguez, Director
1100 North Stanton, Suite 610
El Paso, Texas 79902
Ph: 915-533-0998 1-800-333-7082
Fax: 915-544-5402

Executive Director

Rio Grande Council of Governments
Mr. Jake Brisbin, Jr.

Counties Served: Brewster, Culberson, El Paso,
Hudspeth, Jeff Davis, Presidio

83123-South East Texas AAA

Ms. Roxanne Smith Parks, Director
2210 Eastex Freeway
Beaumont, Texas 77703
Ph: 409-899-8444 1-800-395-5465
Fax: 409-899-4829

Executive Director

South East Texas Regional Planning Commission
Mr. Chester R. Jourdan, Jr.

Counties Served: Hardin, Jefferson, Orange

83124-South Plains AAA

Mr. Pete H. Lara, Director
P. O. Box 3730 / Freedom Station
Lubbock, Texas 79452
Ph: 806-762-8721 1-800-858-1809
Fax: 806-765-9544

Executive Director

South Plains Association of Governments
Mr. Tim C. Pierce

Counties Served: Bailey, Cochran, Crosby,
Dickens, Floyd, Garza, Hale, Hockley, King,
Lamb, Lubbock, Lynn, Motley, Terry, Yoakum

83125-South Texas AAA

Mr. Alberto Rivera, Jr., Aging Services Director
P.O. Box 2187
Laredo, Texas 78044-2187
Ph: 956-722-3995 1-800-292-5426
Fax: 956-722-2670

Executive Director

South Texas Development Council
Mr. Amando Garza, Jr.

Counties Served: Jim Hogg, Starr, Webb, Zapata

83126-Tarrant County AAA

Mr. Steve Cordio, Acting Director
210 East Ninth Street
Fort Worth, Texas 76102
Ph: 817-258-8081 1-877-886-4833
Fax: 817-258-8097

Executive Director

United Way Metropolitan Tarrant County
Ms. Ann Rice

Counties Served: Tarrant

83127-Texoma AAA

Ms. Janis Thompson, Director
1117 Gallagher
Gallagher Professional Building, Suite 200
Sherman, Texas 75090
Ph: 903-813-3580 1-800-677-8264
Fax: 903-813-3515

Executive Director

Texoma Council of Governments
Mrs. Frances Pelley

Counties Served: Cooke, Fannin, Grayson

83128-West Central Texas AAA

Ms. Gail Kaiser, Director
1025 East North 10th St.
Abilene, Texas 79601
Ph: 325-672-8544 1-800-928-2262
Fax: 325-675-5214

Executive Director

West Central Texas Council of Governments
Mr. James K. Compton

Counties Served: Brown, Callahan, Coleman,
Comanche, Eastland, Fisher, Haskell, Jones, Kent,
Knox, Mitchell, Nolan, Runnels, Scurry,
Shackelford, Stephens, Stonewall, Taylor,
Throckmorton

Contact the Department of Aging and Disability Services, Access and Intake--Area Agencies on Aging Section at (512) 438-4245 for questions about this general notice.

TRD-200502484

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Filed: June 15, 2005

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Office of the Attorney General**Notice of Settlement of a Texas Solid Waste Disposal Enforcement Action**

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: *Settlement Agreement in Harris County, Texas and the State of Texas acting by and through the Texas Commission on Environmental Quality v. Richard J. Burns*, Cause No. 2003 - 64278, 113th Judicial District, Harris County, Texas.

Background: This suit alleges violations of the Texas Solid Waste Disposal Act at a site in Harris County, Texas. The Defendant is Richard J. Burns. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs. The Solid Waste Disposal Act violations are for disposal of various household wastes without a permit at 7610 East Mount Houston Road, Houston, Harris County, Texas. The waste was removed from the site soon after the lawsuit was filed. Richard J. Burns no longer owns the site.

Nature of Settlement: The settlement awards \$218.75 in attorney's fees to the State and \$166.00 in court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200502396

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: June 14, 2005



Notice Regarding Private Real Property Rights Preservation Act (SB 14) Guidelines

In 1995 the Legislature enacted Senate Bill 14, the Private Real Property Rights Preservation Act (the Act), codified at Government Code, Chapter 2007. As required by the Act, the Office of the Attorney General prepared Guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. Those Guidelines were published in the January 12, 1996 issue of the *Texas Register* (21 TexReg 387). Current versions of the Guidelines appear on the Office of the Attorney General website at www.oag.state.tx.us and are published in the October 25, 2002 issue of the *Texas Register* (27 TexReg 10173).

The Act also requires the Office of the Attorney General to review the Guidelines at least annually and revise them as necessary.

The Office of the Attorney General has begun its annual review and invites comments whether the Guidelines are consistent with actions of the Texas Legislature and the decisions of the United States and Texas Supreme Courts from June 1, 2004 through May 31, 2005. Please address comments to Cue D. Boykin, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, TX 78701-2548 no later than August 23, 2005. Comments may be submitted by email to cue.boykin@oag.state.tx.us.

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200502439

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: June 14, 2005



Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Brazoria County, Texas, and State of Texas v. William Daniel Moore*, Cause no. 9761 JG99, in the 239th District Court of Brazoria County, Texas

Nature of Defendant's Operations: Defendant Moore owned and operated several illegal dump sites in Brazoria County. Brazoria County filed its petition against Defendant Moore claiming violations of 1) the Texas Solid Waste Disposal Act, Tex. Health & Safety Code, Chapter 361, 2) Texas Water Code §26.121, governing water pollution, and 3) a

Brazoria County anti-dumping ordinance. The State of Texas, through the Texas Commission on Environmental Quality (TCEQ) is a necessary and indispensable party to Brazoria County's lawsuit.

Proposed Agreed Judgment: In response to the lawsuit, Moore entered into a contract with Vernor Materials, a materials handling company in Brazoria County, to clean seven sites Moore owned in Brazoria County to the satisfaction of the County and TCEQ in exchange for title to the seven tracts which will be deeded to Vernor, except for title to Moore's homestead. Vernor has removed all materials from the surface of the seven sites, including some hazardous waste, and has submitted soil and water test results to TCEQ for approval. The Agreed Final Judgment and Permanent Injunction prohibits Defendant Moore from further illegal dumping in Texas.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200502415

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: June 14, 2005



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 3, 2005, through June 9, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council's web site. The notice was published on the web site on June 15, 2005. The public comment period for these projects will close at 5:00 p.m. on July 15, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Osprey Line; Location: The project is located on Cedar Bayou at 1405 FM 1405 Road, southwest of the intersection of Spur 55 and FM 1405, in Baytown, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Morgans Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 313142; Northing: 3288537. Project Description: The applicant proposes to construct a barge loading facility for dry cargo containers. The project entails the construction of an 860-linear-foot bulkhead and associated dredging for barge access. The bulkhead will be located at the existing shoreline. All backfill will be above the high

tide line. The approximately 3.8-acre area of Cedar Bayou will be excavated to -10 feet mean low tide. The material will be mechanically excavated and placed at an upland location on the project site. The excavation will impact 0.184 acre of *Spartina alterniflora* wetlands. The applicant is currently exploring mitigation opportunities. CCC Project No.: 05-0293-F1; Type of Application: U.S.A.C.E. permit application #23750 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: City of Corpus Christi; Location: The project is located adjacent to Corpus Christi Bay, at the intersection of North Shoreline Boulevard and Kinney Street, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 659500; Northing: 3071950. Project Description: The applicant proposes to replace an existing storm water outfall that is located on the bay side of North Shoreline Boulevard and drains into Corpus Christi Bay. The existing outfall consists of a 3.25-foot-high by 5.7-foot-wide (inside diameter) concrete structure. In order to compensate for the increased storm water volume and flow that will result from drainage improvements in downtown Corpus Christi, the applicant proposes to install a new drainage outfall that would consist of an approximate 12-foot-high by 40-foot-wide concrete box structure. This box structure would include two 6- by 16-foot concrete open box culverts. A scour apron measuring 100 feet by 100 feet would be installed bayward of the culverts. The proposed scour protection apron would consist of approximately 535 cubic yards of crushed stone, geotextile fabric, and concrete revetment mattress that would be placed in Corpus Christi Bay, with a 5-foot-wide band of crushed stone installed along the north, east, and south side edges of the apron to anchor it in place. Approximately 0.27 acre of jurisdictional area of Corpus Christi Bay would be permanently filled for the proposed project. Water depth at the project area is approximately -3 feet mean high tide. CCC Project No.: 05-0307-F1; Type of Application: U.S.A.C.E. permit application #23762 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: F-W Oil Exploration, L.L.C.; Location: The project is located in Federal waters in the Gulf of Mexico, in South Padre Island Area OCS Block 1145 south to South Padre Island Area OCS Block 1166, crossing the Brazos Santiago Pass Safety Fairway in Blocks 1151, 1152, and 1166, offshore, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters) of the north fairway crossing point: Zone 14; Easting: 704542; Northing: 2884459. Approximate UTM Coordinates in NAD 27 (meters) of the south fairway crossing point: Zone 14; Easting: 702284; Northing: 2881136. Project Description: The applicant proposes to install a 6-inch diameter pipeline for the transport of gas and condensate. The pipeline begins at an existing well in Block 1145 and crosses the Brazos Santiago Pass Safety Fairway in Blocks 1151, 1152, and 1166 and terminates at the previously authorized Structure "A" in the Brazos Santiago Pass Anchorage Area. CCC Project No.: 05-0313-F1; Type of Application: U.S.A.C.E. permit application #23766 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: F-W Oil Exploration, L.L.C.; Location: The project is located in Federal waters in the Gulf of Mexico, North Padre Island Area OCS Block 996, 47.46 miles south to South Padre Island Area OCS Block 1166, crossing the Brazos Santiago Pass Safety Fairway in Blocks 1151 and 1166, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate

UTM Coordinates in NAD 27 (meters) of the north fairway crossing point: Zone 14; Easting: 703458; Northing: 2882983. Approximate UTM Coordinates in NAD 27 (meters) of the south fairway crossing point: Zone 14; Easting: 702225; Northing: 2881178. Project Description: The applicant proposes to install a 12.75-inch diameter pipeline for the transport of gas and condensate for a distance of 47.46 miles. The pipeline begins at the previously permitted Structure A within the South Padre Island Area OCS Block 1166 within the South Padre Anchorage Area crosses the Brazos Santiago Pass Safety Fairway in Blocks 1151 and 1166 and terminates at a subsea tie-in in North Padre Island Area OCS Block 996 tying into the applicant's existing 6-inch diameter pipeline. CCC Project No.: 05-0314-F1; Type of Application: U.S.A.C.E. permit application #23722 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Chuck Gautier; Location: The project is located along Crash Boat Basin, at 1526 and 1530 103rd Street, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 317683; Northing: 3238730. Project Description: The applicant proposes to mechanically dredge an existing slough for boat access, construct 2 boathouses, rework existing riprap to protect existing shoreline marsh, construct a bulkhead for shoreline stabilization and mitigate for impacts to 300 square feet of *Spartina alterniflora* from the dredging and boathouse construction. The applicant also requests authorization for 10-year maintenance dredging of the slough. After dredging, the existing slough will be 20 feet in width with a depth of 5 feet at mean high tide (MHT). Currently the depth of the slough averages 1 to 3 feet MHT. Approximately 180 cubic yards of dredge material will be placed on the applicant's existing upland property. The proposed boathouses at 1526 and 1530 103rd Street will be 15 feet wide by 25 feet long. The proposed bulkhead will be placed above the high tide line on the applicant's upland property. To mitigate for wetland impacts the applicant proposes to create approximately 600 square feet of new wetlands with *Spartina alterniflora* from existing uplands on the project site.

On March 15, 2005 a public notice was issued, and the applicant originally proposed to mechanically dredge an existing slough for boat access, construct 3 boathouses, place riprap or a bulkhead for shoreline stabilization and mitigate for impacts to 560 square feet of *Spartina alterniflora* from the dredging and boathouse construction. The applicant also requested authorization for 10-year maintenance dredging of the slough. After dredging, the existing slough would average 30 feet in width with a depth of 5-feet at MHT. Approximately 800 to 1,200 cubic yards of dredge material would be placed on the applicant's existing upland property. The first boathouse at 1534 103rd Street will have a 30-foot-wide by 32-foot-long boathouse and walkway. The second boathouse at 1530 103rd Street would have a 20-foot-wide by 40-foot-long walkway and boathouse. The third boathouse at 1526 103rd Street would have a 20-foot-wide by 32-foot-long walkway and boathouse. Approximately 230 cubic yards of concrete riprap would have been placed along the shoreline or a bulkhead would have been placed above the high tide line and above any existing wetland vegetation for bank stabilization. The applicant proposed to mitigate for wetland impacts by creating approximately 1,218 square feet of new wetlands with *Spartina alterniflora* from existing uplands on the project site. CCC Project No.: 05-0319-F1; Type of Application: U.S.A.C.E. permit application #23669 (Rev.) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited

to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200502388

Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: June 13, 2005

◆ ◆ ◆
Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2005

An additional 1% city sales and use tax for improving and promoting economic and industrial development that includes an additional 1/2% as permitted under Article 5190.6, Section **4A** plus an additional 1/2% as permitted under Article 5190.6, Section **4B** will become effective July 1, 2005 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Seagraves (Gaines Co)	2083028	.020000	.082500

The 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** was abolished and will become effective July 1, 2005 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Pampa (Gray Co)	2090010	.015000	.077500

The 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** was abolished and will become effective July 1, 2005 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Coffee City (Henderson Co)	2107146	.010000	.072500

A 1% special purpose district sales and use tax will become effective July 1, 2005 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Montgomery County Emergency Services District No. 9	5170585	.010000	SEE NOTE 1

NOTE 1: The Montgomery County Emergency Services District No.9 is located in the east-central portion of Montgomery County. The unincorporated areas of Montgomery County in zip codes 77301, 77302, 77306 and 77365 are partially located within The Montgomery County Emergency Services District No.9. Contact the district representative at 936/231-3527 for additional boundary information.

TRD-200502371
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: June 10, 2005

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Notice of Request for Proposals

Pursuant to Chapters 403, 2305; 2305.038; and Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces the issuance of its Request for Proposals (RFP #172j) for energy engineering services from qualified independent firms and qualified energy engineers, to provide energy engineering services for the Local Government Program (Program). Successful Respondent(s) will be asked to assist Comptroller in performing energy engineering services and conducting other activities related to the Program. Successful

Respondent(s) will be expected to begin performance of any contract(s) resulting from this RFP on or about September 1, 2005.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, June 24, 2005, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also plans to place the RFP on the Texas Marketplace after Friday, June 24, 2005, 10:00 a.m. (CZT). All written inquiries and Non-Mandatory Letters of Intent must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Tuesday, July 12, 2005. Non-Mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must be signed by an authorized representative of each entity. All responses to questions will be posted electronically on Tuesday, July 19, 2005, on the Texas Marketplace at: <http://esbd.tbpc.state.tx.us>. Prospective respondents are encouraged to fax the Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered.

Closing Date: Proposals must be received in the Assistant General Counsel, Contracts Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Tuesday, July 26, 2005. Proposals received after this time and proposals submitted by facsimile will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - Friday, June 24, 2005, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - Tuesday, July 12, 2005, 2:00 p.m. CZT; Posting of Official Responses to Questions - Tuesday, July 19, 2005; Proposals Due - Tuesday, July 26, 2005, 2:00 p.m. CZT; Contract Execution - September 1, 2005, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2005, or as soon thereafter as practical.

TRD-200502408
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 14, 2005

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Notice of Request for Proposals

Pursuant to Chapters 403, 2305; 2305.032; and Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces the issuance of its Request for Proposals (RFP #172h) for energy engineering services from qualified independent firms and qualified energy engineers, to provide energy engineering services for the LoanSTAR Revolving Loan Program (Program). Successful Respondent(s) will be asked to assist Comptroller in performing energy engineering services and assist in conducting monitoring activities required

by the Program. Successful Respondent(s) will be expected to begin performance of any contract(s) resulting from this RFP on or about September 1, 2005.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, June 24, 2005, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also plans to place the RFP on the Texas Marketplace after Friday, June 24, 2005, 10:00 a.m. (CZT). All written inquiries and Non-Mandatory Letters of Intent must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Friday, July 8, 2005. Non-Mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must be signed by an authorized representative of each entity. All responses to questions will be posted electronically on Friday, July 15, 2005, on the Texas Marketplace at: <http://esbd.tbpc.state.tx.us>. Prospective respondents are encouraged to fax the Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered.

Closing Date: Proposals must be received in the Assistant General Counsel, Contracts Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, July 22, 2005. Proposals received after this time and proposals submitted by facsimile will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - Friday, June 24, 2005, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - Friday, July 8, 2005, 2:00 p.m. CZT; Posting of Official Responses to Questions - Friday, July 15, 2005; Proposals Due - Friday, July 22, 2005, 2:00 p.m. CZT; Contract Execution - September 1, 2005, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2005, or as soon thereafter as practical.

TRD-200502409
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 14, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/20/05 - 06/26/05 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/20/05 - 06/26/05 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200502398

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 14, 2005

Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application for a name change was received from Medical Community Credit Union, Odessa, Texas. The credit union is proposing to change its name to First Basin Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200502480

Harold E. Feeney

Commissioner

Credit Union Department

Filed: June 15, 2005

Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from The Education Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit members of Amarillo Independent School District (AISD) Council of PTA's and the individual members of the PTA organizations at Austin Middle School, Bonham Middle School, Bowie Middle School, Crocket Middle School, Fannin Middle School, Sam Houston Middle School, Horace Mann Middle School, Travis Middle School, Avondale Elementary School, Belmar Elementary School, Bivins Elementary School, Carver Elementary Academy, Carver Early Childhood, Coronado Elementary School, Eastridge Elementary School, Emerson Elementary School, Forest Hill Elementary School, Glenwood Elementary School, Hamlet Elementary School, Humphrey's Highland Elementary School, Lamar Elementary School, Alice Landergerin Elementary School, Lawndale Elementary School, Robert Lee Elementary School, Mesa Verde Elementary School, Oak Dale Elementary School, Olsen Park Elementary School, Paramount Terrace Elementary School, Pleasant Valley Elementary School, Puckett Elementary School, Ridgecrest Elementary School, Rogers Elementary School, Sanborn Elementary School, San Jacinto Elementary School, Sleepy Hollow Elementary School, South Georgia Elementary School, South Lawn Elementary School, Sunrise Elementary School, Western Plateau Elementary School, Whittier

Elementary School, Wills Elementary School, Windsor Elementary School, Wolfen Elementary School, Woodlands Elementary School, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcud.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200502481

Harold E. Feeney

Commissioner

Credit Union Department

Filed: June 15, 2005

Applications for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Procter & Gamble Texas Employees Credit Union (Dallas) seeking approval to merge with Texas Federal Credit Union (Dallas), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200502482

Harold E. Feeney

Commissioner

Credit Union Department

Filed: June 15, 2005

Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

First Central Credit Union, Waco, Texas (Amended) - Persons who reside, work, worship or attend school within a 10-mile radius of the office of First Central Credit Union located at: 227 E. Franklin Street, Hillsboro, Texas.

Fort Worth Community Credit Union (#4), Bedford, Texas (Conditional) - See *Texas Register* issue dated April 30, 2004.

U.S. Employees Credit Union, The Woodlands, Texas - See *Texas Register* issue dated March 25, 2005.

Texas Health Credit Union, Austin, Texas - See *Texas Register* issue dated March 25, 2005.

MemberSource Credit Union, Houston, Texas - See *Texas Register* issue dated March 25, 2005.

Houston Postal Credit Union, Houston, Texas (Amended) - Persons who live, work, attend school or worship in and businesses located within 10 miles of each of the following branch offices: 6055 South Loop East, Houston, Texas 77087; 401 Franklin Avenue, Houston, Texas 77002; 4600 Aldine Bender Road, Houston, Texas 77032.

Ward County Teachers Credit Union (#1), Monahans, Texas - See *Texas Register* issue dated March 25, 2005

Application(s) to Expand Field of Membership - Denied

Ward County Teachers Credit Union (#2), Monahans, Texas - See *Texas Register* issue dated March 25, 2005

Application(s) to amend Articles of Incorporation - Approved

BP Employees Credit Union, Alvin, Texas - See *Texas Register* issue dated April 29, 2005.

TRD-200502483

Harold E. Feeney

Commissioner

Credit Union Department

Filed: June 15, 2005

◆ ◆ ◆ **Deep East Texas Council of Governments**

Request for Proposal for Floor Maintenance

The Deep East Texas Council of Governments is now accepting bids for floor maintenance of the Jasper DETCOG office. Bid documents may be picked up at the DETCOG office on 210 Premier Drive, Jasper, Texas 75951 through Wednesday, July 8, 2005.

The Full RFP can be obtained at <http://www.detcog.org> or by contacting:

Bobbie Stott Purchasing Officer

Phone: (409) 384-5704 Ext. 245

Fax: (409) 384-5390

Email: bstott@detcog.org

Submission is due to DETCOG no later than 3:00 PM on July 8, 2005.

TRD-200502373

Walter G. Diggles

Executive Director

Deep East Texas Council of Governments

Filed: June 10, 2005

◆ ◆ ◆ **East Texas Council of Governments**

Request for Proposals for Worker Training Initiatives

Notice is given that as the administrative unit for the East Texas Workforce Development Board, the East Texas Council of Governments (ETCOG), is soliciting proposals for worker training initiatives with primary companies. Funding is available to provide access to targeted training dollars for current workers. The Skills Advancement Fund of East Texas (SAFE) is intended as an avenue for primary companies throughout the East Texas WDA to access funding to provide worker training by partnering with providers such as local community colleges

or to train workers in-house. The term "primary company" as described in the Request for Proposals, is synonymous with the definition cited in Texas legislation. As applied to the fourteen-county East Texas Workforce Development Area, it refers to a company in an identified industry that manufactures a product or provides a service where at least 50% of sales come from outside the area.

The East Texas Workforce Development Board is responsible for the oversight of state and federally funded training, employment, and childcare services in a fourteen county area around Longview/Marshall and Tyler MSA.

Persons or organizations wanting to receive a Request for Proposals (RFP) package should inquire by letter, fax, or email to East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Attn: Daniel Pippin. The fax number for ETCOG is (903) 983-1440. The email address is Daniel.Pippin@twc.state.tx.us. Questions regarding the RFP process can be addressed by calling (903) 984-8641.

A bidders conference will take place on Thursday, June 28, 2005 at 1:30 p.m. It is anticipated that the deadline for receipt of proposals shall be 5:00 p.m. CDT, Thursday, July 21, 2005.

TRD-200502395

Glynn Knight

Executive Director

East Texas Council of Governments

Filed: June 13, 2005

◆ ◆ ◆ **Texas Commission on Environmental Quality**

Notice of Comment Period and Announcement of Public Meeting on Draft Standard Permit for Animal Carcass Incinerators

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and will conduct a public meeting to receive testimony concerning a draft standard permit for animal carcass incinerators proposed for issuance under Texas Health and Safety Code, Texas Clean Air Act, §382.05195, Standard Permit, and 30 Texas Administrative Code (TAC) Chapter 116, Subchapter F, Standard Permits.

DRAFT PERMIT

The draft standard permit for animal carcass incinerators is applicable to those facilities and associated equipment that are used to incinerate animal carcasses and comply with the requirements as specified by this standard permit.

The New Source Review Program under 30 TAC Chapter 116 requires any person who plans to construct any new facility or to modify any existing facility that may emit air contaminants into the air of the state to obtain a permit in accordance with §116.111, General Application, satisfy the de minimis criteria of 30 TAC §116.119, De Minimis Facilities or Sources, or satisfy the conditions of a standard permit, a flexible permit, or a permit by rule before any actual work is begun on the facility. A standard permit authorizes the construction or modification of new or existing facilities that are similar in terms of operations, processes, and emissions.

A draft standard permit is subject to the procedural requirements of §116.603, Public Participation in Issuance of Standard Permits, which includes a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. The public is entitled to submit written or verbal comments regarding the proposed standard permit.

PUBLIC MEETING

A public meeting on the draft standard permit for animal carcass incinerators will be held in Austin, Texas. The meeting will be structured for the receipt of oral or written comments. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the meeting; however, TCEQ staff members will be available to discuss the draft standard permit for animal carcass incinerators 30 minutes prior to the meeting and staff will also answer questions after the meeting. The public meeting will be held on July 28, 2005, at 9:00 a.m., at the Texas Commission on Environmental Quality in Building B, Room 201A, 12100 Park 35 Circle, Austin, Texas.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-1250. Requests should be made as far in advance as possible.

PUBLIC COMMENT AND INFORMATION

Copies of the draft standard permit for animal carcass incinerators may be obtained from the TCEQ Web site at http://www.tnrc.state.tx.us/permitting/airperm/nsr_permits/files/acipc.pdf or by contacting the Office of Permitting, Remediation, and Registration, Air Permits Division, Texas Commission on Environmental Quality, at (512) 239-1250. Comments may be mailed to Blake Stewart, Office of Permitting, Remediation, and Registration, Air Permits Division, Texas Commission on Environmental Quality, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the draft standard permit for animal carcass incinerators. Comments must be received by 5:00 p.m. on July 28, 2005. To inquire about the submittal of comments or for further information, contact Blake Stewart at (512) 239-6931.

TRD-200502444

Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 14, 2005



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 25, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 25, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: ConocoPhillips Company formerly known as Phillips Petroleum Company; DOCKET NUMBER: 2002-0351-AIR-E; TCEQ ID NUMBERS: HW-0018-P and RN102495884; LOCATION: two miles northeast of Borger on Spur 119N, Hutchinson County, Texas; TYPE OF FACILITY: petroleum refinery plant; RULES VIOLATED: 30 TAC §116.160 and §116.715(a), TCEQ Permit Number 9868A and PSD-TX-102M4, Special Conditions 2 and 5(C), and Texas Health and Safety Code (THSC), §382.085(b), by failing to operate the affected flares with no visible emissions; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Conditions 2 and 5(B), and THSC, §382.085(b), by failing to operate the affected flares with the pilot flame present at all times; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Conditions 2 and 30, 40 Code of Federal Regulations (CFR) §60.104(a)(1), and THSC, §382.085(b), by failing to operate the affected units with fuel hydrogen sulfide concentrations within the allowable value of less than 0.10 grains per dry standard cubic feet; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 2, 40 CFR §60.115b, and THSC, §382.085(b), by failing to show correct vapor pressure for tanks; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 4, 40 CFR §63.167(a)(2), and THSC, §382.085(b), by failing to ensure that open-ended valves were sealed with a cap, blind flange, plug, or a second valve at all times; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 12, and THSC, §382.085(b), by failing to continuously monitor and record the firebox temperature every four hours; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 44, and THSC, §382.085(b), by failing to use the proper preservation temperature for submitting samples from the cooling towers; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 3, 40 CFR §61.345(b), and THSC, §382.085(b), by failing to conduct quarterly visual inspections of the vacuum trucks; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Conditions 2 and 3, 40 CFR §61.357(d)(7)(iv)(F) and §60.115(d)(2) and (3), and THSC, §382.085(b), by failing to submit complete quarterly reports; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 2, 40 CFR §60.698(b)(1), and THSC, §382.085(b), by failing to timely submit the semi-annual certification showing that all inspections had been conducted; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 2, 40 CFR §60.482-2(a)(1) and §61.242-1(a)(1), and THSC, §382.085(b), by failing to conduct fugitive emission monitoring; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 2, 40 CFR §60.482-7(d)(1), and THSC, §382.085(b), by failing to repair a valve within 15 days from the leak being detected; 30 TAC §116.160 and §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 2, 40 CFR §60.104(a)(2), and THSC, §382.085(b), by discharging into the atmosphere sulfur dioxide (SO₂) with a 12-hour

rolling average concentration in excess of 250 parts per million by volume (ppmv) at 0% excess air; 30 TAC §§116.160, 116.715(a), and 101.201(b)(10), Air Permit Numbers 9868A and PSD-TX-102M4, and THSC, §382.085(b), by failing to submit complete upset reports; 30 TAC §116.715(a) and §116.710(a), Air Permit Numbers 9868A and PSD-TX-102M4, and THSC, §382.085(b), by failing to obtain authorization for the unauthorized emissions during 37 emission events which did not qualify for an affirmative defense to an enforcement action; 30 TAC §116.715(a) and §101.201(a)(2), Air Permit Numbers 9868A and PSD-TX-102M4, and THSC, §382.085(b), by failing to timely submit the initial/final upset reports; 30 TAC §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 50E, and THSC, §382.085(b), by failing to submit a copy of the final sampling report within 45 days after sampling was completed; 30 TAC §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 5C, and THSC, §382.085(b), by failing to operate the acid gas flare with no visible emissions; 30 TAC §116.715(a), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 51B, and THSC, §382.085(b), by failing to perform emissions testing within 14 days of replacing the oxygen sensors; 30 TAC §116.710(a) and THSC, §382.085(b), by emitting into the atmosphere unauthorized pollutants, 30 TAC§101.211(b) and THSC, §382.085(b), by failing to submit the final report for the emission event; 30 TAC§101.201(a)(1) and THSC, §382.085(b), by failing to submit the initial emission events reports within 24 hours of discovery; 30 TAC §116.710(a) and §116.715(a) and (c)(7), Air Permit Numbers 9868A and PSD-TX-102M4, Special Condition 1, and THSC, §382.085(b), by emitting into the atmosphere unauthorized pollutants during 12 emission events; PENALTY: \$427,000; STAFF ATTORNEY: Barbara L. Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: Manzoor Enterprise, Inc. dba M&M Food Mart; DOCKET NUMBER: 2003-1170-PST-E; TCEQ ID NUMBERS: 0067211 and RN101435790; LOCATION: 7448 Spencer Highway, Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tanks (USTs); PENALTY: \$1,600; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Nasrolah Kamalie dba Lucky Way Food Store; DOCKET NUMBER: 2004-1244-PST-E; TCEQ ID NUMBERS: 45459 and RN102237385; LOCATION: 3802 Cove View Boulevard, Galveston, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; PENALTY: \$4,000; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Rolando Dela Cruz dba Manila Food Plaza; DOCKET NUMBER: 2004-1498-PST-E; TCEQ ID NUMBERS: 48946 and RN102224755; LOCATION: 900 East Hackberry Street, McAllen, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a)

and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; PENALTY: \$3,150; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200502407

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 14, 2005



Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 25, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 25, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Aegon Direct Marketing Services, Inc.; DOCKET NUMBER: 2005-0296-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 71356, Regulated Entity Number (RN) 101566941; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: marketing facility with an on-site PST; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$840; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Joyce Ann Mauldin dba Allsup's Convenience Store; DOCKET NUMBER: 2005-0487-PST-E; IDENTIFIER: PST Registration Identification Number 27595, RN102823291; LOCATION: Wellington, Collingsworth County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial

assurance; PENALTY: \$2,560; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Bollinger Houston, L.P.; DOCKET NUMBER: 2005-0630-AIR-E; IDENTIFIER: Air Account Number HG3214U, RN100219088; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: abrasive cleaning and surface painting plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 22561, and THSC, §382.085(b), by failing to operate within the permitted limits for volatile organic compound emissions and by failing to produce reports at the end of each calendar month that contain emission rates for the emission points; and 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain authorization prior to commencing painting operations; PENALTY: \$11,648; ENFORCEMENT COORDINATOR: Trina Greico, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Brownsville Navigation District; DOCKET NUMBER: 2003-1227-SLG-E; IDENTIFIER: Sludge Registration Number 21816, RN103031670; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: sludge transporter service; RULE VIOLATED: 30 TAC §312.143, by failing to deposit wastes at a facility designated by, or acceptable to, the generator; 30 TAC §312.142(c) and §312.144(f), by failing to prominently mark all discharge valves and ports and maintain a copy of the registration authorization in each vehicle; and 30 TAC §312.9, by failing to timely pay sludge transporter fees; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: C. A. Popp dba C. A. Popp Texaco; DOCKET NUMBER: 2005-0580-PST-E; IDENTIFIER: PST Facility Identification Number 12320, RN102271079; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$680; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239-1675; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Coastal Transport Co., Inc.; DOCKET NUMBER: 2005-0366-PST-E; IDENTIFIER: PST Facility Identification Number 29449, RN101700599; LOCATION: Cedar Park, Williamson County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$800; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(7) COMPANY: Jivanji Burhani dba Corner Spot; DOCKET NUMBER: 2005-0696-PST-E; IDENTIFIER: PST Registration Identification Number 75038, RN102719036; LOCATION: Dickinson, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$1,280; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Samuel Holcomb dba Holcomb Oil Recycling; DOCKET NUMBER: 2004-1026-MLM-E; IDENTIFIER: Solid Waste Registration Number 66471, Used Oil Transporter Number A85038, RN102777174; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: used oil recycling; RULE VIOLATED: 30 TAC

§328.24(a) and (c), by failing to properly register as a used oil filter transporter, storage facility, and processor and by failing to submit the 2000/2001 biennial report; 30 TAC §321.1 and §324.11 and 40 Code of Federal Regulations (CFR) §279.43(a)(3) and §279.44(d), by failing to transport off-specification used oil fuel to an off-specification used oil burner and by failing to maintain records of halogen analyses; 30 TAC §324.4(2)(C)(i) and §324.12(2), by failing to properly register as a used oil processor prior to processing used oil; 30 TAC §37.2011 and §324.22 and Agreed Order Number 2002-1049-MSW-E, by failing to demonstrate proper financial assurance to the commission for soil remediation; 30 TAC §335.6(c), by failing to notify the commission of all changes to the notice of registration; 30 TAC §334.9(a)(2), by failing to submit complete and correct annual waste summaries; and 30 TAC §335.323 and the Code, §5.702, by failing to pay all outstanding non-hazardous waste generation fees; PENALTY: \$11,668; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: JPO Enterprises, Inc. dba EZ Clean Car Wash; DOCKET NUMBER: 2005-0239-SLG-E; IDENTIFIER: Sludge Transporter Registration Number 23325, RN103161949; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: sludge transportation operation; RULE VIOLATED: 30 TAC §312.143, by failing to deposit wastes at a facility designated by, or acceptable to, the generator; 30 TAC §312.145(a) and (b)(4), by failing to maintain a record of each individual collection and deposit in the form of a trip ticket and by failing to submit their annual summary of activities; 30 TAC §312.142(c) and (f)(1), by failing to maintain a copy of the registration authorization with the assigned registration number and by failing to give notice of the office or place of business being moved; and 30 TAC §312.144(a) and (f), by failing to prominently mark any specially equipped vacuum pump truck, tank, or container with the company name, telephone number, authorization stickers, and the commission assigned registration number and by failing to prominently mark all discharge valves and ports; PENALTY: \$6,300; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: Jack Ray & Sons Oil Co., Inc.; DOCKET NUMBER: 2005-0458-PST-E; IDENTIFIER: RN101563039; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$1,920; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: La Gloria Oil and Gas Company; DOCKET NUMBER: 2005-0342-AIR-E; IDENTIFIER: Air Account Number SK0022A, RN100222512; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Numbers R-5955, 56281, 4028, R-4902, and 21004, and THSC, §382.085(b), by failing to comply with the emission limits for sulfur dioxide; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(12) COMPANY: Lyondell-Citgo Refining LP; DOCKET NUMBER: 2005-0359-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §§101.20(1) - (3), 115.352(2), 116.715(a), 40 CFR §§60.103(a), 60.104(a)(1), and 63.171(a), New Source Review (NSR) Flexible Air Permit Number 2167/PSD-TX-985, and THSC,

§382.085(b), by failing to limit the hydrogen sulfide concentration, by failing to operate the wet gas scrubber at a minimum pressure drop, by failing to maintain a maximum hourly average carbon monoxide concentration, by failing to maintain the sulfur dioxide concentration, and by failing to repair three valves within 15 days of leak detection; 30 TAC §§101.20(3), 111.111(a)(4)(A)(ii), and 116.715(a), NSR Flexible Air Permit Number 2167/PSD-TX-985, and THSC, §382.085(b), by failing to note daily flare observations in the flare observation log; and 30 TAC §§101.20(3), 115.114(a)(1) and (2), and 116.715(a), 40 CFR §63.120(a)(2)(i) and (b)(1)(iii), NSR Flexible Air Permit Number 2167/PSD-TX-985, and THSC, §382.085(b), by failing to conduct the required inspections for three storage tanks; PENALTY: \$105,336; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: McCormick Marketing, Inc.; DOCKET NUMBER: 2005-0611-PST-E; IDENTIFIER: PST Facility Identification Number 51989, RN101832681; LOCATION: O'Donnell, Lynn County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$800; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(14) COMPANY: Millennium Petrochemicals, Inc.; DOCKET NUMBER: 2005-0053-AIR-E; IDENTIFIER: Air Account Number HX1726J, RN100224450; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), New Source Permit Number 4751, and THSC, §382.085(b), by failing to comply with the emission limits; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the regional office of a reportable emissions event; PENALTY: \$10,750; ENFORCEMENT COORDINATOR: Kensley Greuter, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: North Park Public Utility District; DOCKET NUMBER: 2005-0400-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11855001, RN102185808; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11855001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$45,000; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Penn-Cal, L.L.C.; DOCKET NUMBER: 2005-0627-AGR-E; IDENTIFIER: TPDES Permit Number 0003199000, RN102313244; LOCATION: Hico, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.39(b)(1), (f)(19)(A), (C) - (F), and §321.40(8) (currently 30 TAC §321.39(b)(3) and §321.40(d) - (f)), TPDES Permit Number 0003199000, and the Code, §26.121(a), by failing to maintain compliance with the waste storage ponds (WSP) and by failing to operate and maintain irrigation equipment by failing to dewater the WSP; PENALTY: \$6,944; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Richard and Rebecca Reed dba R&R Reed Recycling; DOCKET NUMBER: 2005-0265-MLM-E; IDENTIFIER: RN104310735; LOCATION: Commerce, Hunt County, Texas; TYPE OF FACILITY: salvage yard recycling; RULE VIOLATED: 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to report an

emission event and by failing to comply with the general outdoor burning prohibition; 30 TAC §116.110(a)(1) and THSC, §382.085(b), by failing to contain their emission; 30 TAC §330.5(c) and §335.4(1), by failing to prevent the disposal and dumping of municipal and industrial solid waste at an unauthorized site; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct a hazardous waste determination and waste classification; 30 TAC §328.60(a), by failing to obtain a scrape tire storage site registration; and 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: \$16,728; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Sabine Valley Center dba Oak Haven Recovery Center; DOCKET NUMBER: 2004-1860-MWD-E; IDENTIFIER: TPDES Permit Number 11361001, RN101525608; LOCATION: Marshall, Harrison County, Texas; TYPE OF FACILITY: domestic wastewater; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11361001, and the Code, §26.121(a), by failing to comply with the permitted discharge limits for total suspended solids and dissolved oxygen; PENALTY: \$1,680; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(19) COMPANY: Dae Kwang Kim dba Times Market 121; DOCKET NUMBER: 2005-0279-PST-E; IDENTIFIER: PST Facility Identification Number 32920, RN102379021; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and (B)(ii) and the Code, §26.3467(a), by failing to ensure that the owner or operator had a valid, current delivery certificate and by failing to renew the underground storage tank registration (UST) and self-certification form; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to test a line leak detector and by failing to monitor USTs and pressurized piping for releases; PENALTY: \$12,400; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Total Petrochemicals USA, Inc.; DOCKET NUMBER: 2005-0146-AIR-E; IDENTIFIER: Air Account Number HG0036S, RN100212109; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Numbers 21538 and 3908B, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,900; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200502400

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 14, 2005

Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: 8 Days Before an Election Report Due October 25, 2004

Harold V. Dutton, Jr., 4432 Rawley, Houston, Texas 77020

Deadline: Semiannual GPAC/SPAC Report Due January 18, 2005

Ralph Buller, Citizens for New Braunfels First, 319 N. Main Avenue, San Antonio, Texas 78205-1413

Raymond H. Langhaim, Keep Our Kids Safe, 101-C N. Greenville Avenue, PMB #603, Allen, Texas 75002

Bart C. Standley, Campaign for Houston, 5440 Alder, Houston, Texas 77081

Deadline: Semiannual J/COH Report Due January 18, 2005

Bernald Fred Ashmead, 1348 Gardenia, Houston, Texas 77018

Yvonne Davis, P.O. Box 763368, Dallas, Texas 75376-3368

Milton I. Fagin, P.O. Box 100777, San Antonio, Texas 78201

Andrew Butler Hill, 3933 Bunting Avenue, Fort Worth, Texas 76107-2610

Rick W. Neudorff, 2307 Bengal, Plano, Texas 75023

Bonnie Rangel, 500 E. San Antonio #601, El Paso, Texas 79901

Deadline: Monthly Report Due April 5, 2005

Ronald Martin, Houston Police Officers Union PAC, 1602 State Street, Houston, Texas 77007

Deadline: Lobby Activities Report Due January 10, 2005

Tony Koriath, P.O. Box 161000, Austin, Texas 78716

Pamela R. Beachley, 906 Rio Grande Street, Austin, Texas 78701

Ervin E. Schroeder, 5618 Highway 332 East, Freeport, Texas 77541

James L. Frey, P.O. Box 40, Lorena, Texas 76655-0040

Sandra L. Tyler, 2828 N. Haskell Street, Dallas, Texas 75204

Allen K. Horne, 4817 Malaquita Branch, Austin, Texas 78738

Melinda Wheatley, 208 Westhaven Drive, Austin, Texas 78746-4443

Martin L. Allday III, P.O. Box 27564, Houston, Texas 77227

Craig Douglas, 1717 West Sixth Street, Suite 300, Austin, Texas 78703

Michael Cushman, 401 W. 15th Street, Austin, Texas 78701

Noe Rangel, 755 E. Mulberry, Suite 200, San Antonio, Texas 78212

Melodie Stegall, 3600 W. Parmer Lane, Suite 120, Austin, Texas 78727

Tammy Dowe, 1293 Eldridge Parkway, Houston, Texas 77077

Lara Kennedy, 9600 Great Hills Trail, Suite 150W, Austin, Texas 78759

Monty W. Wynn, Texas Children's Hospital, 6621 Fannin Street, Houston, Texas 77030-2399

E. J. Agbonayinma, P.O. Box 1111, Stafford, Texas 77497

Deadline: Lobby Activities Report Due February 10, 2005

Blanca Laborde, 2100 LaCasa Drive, Austin, Texas 78704

Deadline: Lobby Activities Report Due March 10, 2005

Melinda Wheatley, 208 Westhaven Drive, Austin, Texas 78746-4443

Deadline: Lobby Activities Report Due April 11, 2005

Melinda Wheatley, 208 Westhaven Drive, Austin, Texas 78746-4443

Frank Jackson, 701 Brazos #500, Austin, Texas 78701

Mark Seale, 1122 Colorado Street, Suite 111-A, Austin, Texas 78701

Deadline: Lobby Activities Report Due May 10, 2005

Melinda Wheatley, 208 Westhaven Drive, Austin, Texas 78746-4443

Mark Seale, 1122 Colorado Street, Suite 111-A, Austin, Texas 78701

Connie Roberts, 11107 Heron Cove, Austin, Texas 78759

Deadline: Personal Financial Statement Due April 30, 2004

Raymond T. Meza, 3126 Oak Mountain Trail, San Angelo, Texas 76904

TRD-200502391

David Reisman

Executive Director

Texas Ethics Commission

Filed: June 13, 2005



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Brownsville	Los Ebanos PET Imaging Limited DBA Los Ebanos PET Imaging	L05857	Brownsville	00	06/01/05
Dallas	Desoto Surgicare Partners LTD DBA North Texas Surgery Center	L05873	Dallas	00	06/06/05
Pasadena	E+ PET Imaging XVII LP DBA PET Imaging of Houston Southeast	L05891	Pasadena	00	05/26/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Arlington	Metroplex Hematology Oncology Associates DBA Arlington Cancer Center	L03211	Arlington	73	06/01/05
Austin	Austin Heart PA	L04623	Austin	27	06/03/05
Austin	Austin Radiological Association	L00545	Austin	109	06/03/05
Austin	Capital Cardiovascular Consultants	L05590	Austin	08	06/03/05
Austin	MLA Labs Inc	L01820	Austin	29	05/31/05
Bonham	Northeast Medical Center LP DBA Northeast Medical Center	L03331	Bonham	25	06/02/05
College Station	Texas A&M University Environmental Health & Safety	L00448	College Station	122	06/02/05
Crockett	East Texas Medical Center Crockett	L01411	Crockett	27	06/01/05
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	83	06/03/05
Dallas	Texas Instruments Incorporated	L05048	Dallas	07	05/31/05
Dallas	Baylor College of Dentistry	L00323	Dallas	35	06/08/05
Denison	Texoma Medical Center	L01624	Denison	57	06/07/05
Houston	Houston Medical Imaging	L05184	Houston	06	06/02/05
Houston	Cardinal Health	L05536	Houston	14	05/27/05
Houston	Exxonmobil Upstream Research Company	L00205	Houston	55	06/03/05
Houston	The Methodist Hospital	L00457	Houston	133	06/06/05
Houston	University of Houston Environmental Health & Risk Management	L01886	Houston	51	05/27/05
Houston	River Oaks Medical Center LP DBA Twelve Oaks Medical Center	L02432	Houston	45	06/09/05
Linden	Good Shepherd Medical Center - Linden Inc	L02721	Linden	17	06/07/05
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	75	06/07/05
McKinney	Columbia Medical Center of McKinney Subsidiary LP DBA Medical Center of McKinney	L02415	McKinney	32	05/27/05
Midlothian	Chaparral Steel Midlothian LP	L02015	Midlothian	28	06/07/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Plano	North Texas Regional Cancer Center	L05357	Plano	02	06/01/05
Port Lavaca	76 Seadrift Coke LP	L03432	Port Lavaca	18	05/27/05
San Antonio	ACA SA LTD DBA Sendero Imaging & Treatment Center	L05567	San Antonio	08	06/02/05
Sugar Land	E+ PET Imaging XI LP DBA PET Imaging of Sugar Land	L05858	Sugar Land	02	05/27/05
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	11	05/27/05
Sweetwater	Ludlum Measurements Inc	L01963	Sweetwater	70	05/31/05
Texas City	Valero Refining Company	L02578	Texas City	27	06/01/05
Throughout Tx	ECS - Texas LLP	L05384	Addison	02	06/07/05
Throughout Tx	MLA Labs Inc	L01820	Austin	29	05/31/05
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	44	06/06/05
Throughout Tx	Rock Engineering & Testing Laboratory Inc	L05168	Corpus Christi	04	06/01/05
Throughout Tx	CMJ Engineering Inc	L05564	Fort Worth	02	05/27/05
Throughout Tx	Houston City of Department of Health & Human Services	L00149	Houston	69	06/01/05
Throughout Tx	Mandes Inspection & Testing Services Inc	L05220	Houston	53	05/27/05
Throughout Tx	Premium Pipe Services LTD	L05644	Odessa	01	05/26/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	52	06/07/05
Throughout Tx	GCT Inspection Inc	L02378	South Houston	85	06/06/05
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugar Land	89	05/31/05
Tomball	Tomball Hospital Authority DBA Tomball Regional Hospital	L02514	Tomball	37	06/03/05
Tyler	Nutech Inc	L04274	Tyler	49	06/02/05
Victoria	Citizens Medical Center	L00283	Victoria	72	06/03/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Allen	Presbyterian Medical Center DBA Presbyterian Hospital of Allen	L05765	Allen	01	05/26/05
Amarillo	Amarillo Medical Specialists LLP	L05525	Amarillo	05	05/26/05
Aransas Pass	North Bay General Hospital DBA North Bay Hospital	L03446	Aransas Pass	30	06/06/05
Arlington	D Harris Consulting	L04845	Arlington	06	05/26/05
Bremond	Twin Oaks Power LP	L04280	Bremond	09	05/26/05
Bridgeport	BASC Management LLC DBA Bridgeport Ambulatory Surgical Center	L05734	Bridgeport	01	05/26/05
Brownwood	Brownwood Hospital LP DBA Brownwood Regional Medical Center	L02322	Brownwood	51	06/01/05
Carrollton	Alpha Energy Laboratories Inc	L02814	Carrollton	14	05/26/05
Center	Tenet Healthcare Inc DBA Shelby Regional Medical Center	L03608	Center	30	05/26/05
Clarksville	East Texas Medical Center Clarksville DBA ETMC Clarksville	L02978	Clarksville	22	05/26/05

CONTINUED RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Dallas	Methodist Hospitals of Dallas Radiology Services	L00659	Dallas	45	05/26/05
Duncanville	Duncanville Medical Center Inc	L05471	Duncanville	05	05/26/05
Edinburg	McAllen Hospitals LP DBA Edinburg Regional Medical CTR	L04262	Edinburg	15	05/26/05
El Paso	El Paso Healthcare System LP DBA Del Sol Diagnostic Center	L03395	El Paso	40	05/26/05
Fort Worth	Computalog Wireline Products Inc	L00747	Fort Worth	69	05/26/05
Fort Worth	Harris Methodist Hospital Southwest	L04146	Fort Worth	11	05/26/05
Fort Worth	Heart Center of North Texas PA	L05338	Fort Worth	08	05/26/05
Fort Worth	Naresh H Patel MD PA DBA Texas Cardiology Clinic	L05520	Fort Worth	04	05/26/05
Fort Worth	Raytel Nuclear Imaging LP	L04659	Fort Worth	10	05/26/05
Gun Barrel City	Heartmasters PA	L05760	Gun Barrel City	01	05/26/05
Houston	Abitibi Consolidated Inc DBA Abitibi Consolidated	L01793	Houston	27	05/26/05
Houston	American Diagnostic Tech LLC	L05514	Houston	17	05/26/05
Houston	Lark Technologies Inc	L04387	Houston	16	05/26/05
Huntsville	Huntsville Memorial Hospital	L02822	Huntsville	12	05/26/05
Jewett	Nucor Steel	L02504	Jewett	15	05/26/05
Killeen	Metropex Hospital	L03185	Killeen	24	05/26/05
Lubbock	Cardinal Health	L02737	Lubbock	49	05/26/05
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	74	05/31/05
Midland	HIS Inspection Inc	L04861	Midland	13	05/26/05
New Braunfels	Cemex USA	L02809	New Braunfels	26	05/26/05
Odessa	Desert Industrial X-Ray LP	L04590	Odessa	40	05/26/05
Pasadena	PET Scans of America Corp DBA Bayshore Medical Center	L05406	Pasadena	04	05/26/05
Rockdale	TXU Generation CO LP DBA TXU Power	L04075	Rockdale	07	05/26/05
San Antonio	Alamo Feline Health Center PC	L05752	San Antonio	04	05/26/05
Sunray	Diamond Shamrock Refining Company LP	L04398	Sunray	14	06/07/05
Throughout Tx	Lind & Associates Inc DBA T & N Laboratories & Engineering	L04417	Beaumont	13	05/26/05
Throughout Tx	Numed Imaging Centers Inc	L05762	Cleburne	05	05/26/05
Throughout Tx	Berry Fabricators	L01575	Corpus Christi	47	05/26/05
Throughout Tx	PCI Services A Division of RNA Inc	L04596	Corpus Christi	08	05/26/05
Throughout Tx	Hooper Engineering Laboratories Inc	L02309	Dallas	10	05/31/05
Throughout Tx	Radiation Consultants Inc	L02179	Deer Park	37	05/26/05
Throughout Tx	Savage-Tolk Corporation	L02672	Earth	20	05/26/05
Throughout Tx	French Engineering Inc	L04572	Houston	06	05/26/05
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	199	05/26/05
Throughout Tx	Longview Asphalt Inc	L04827	Longview	07	05/31/05
Throughout Tx	Lubbock Labs	L01558	Lubbock Labs	12	05/26/05
Throughout Tx	Wheeler Coatings Asphalt Inc	L05059	Round Rock	05	05/26/05
Throughout Tx	BJ Services Company USA	L02684	Tomball	48	05/26/05

CONTINUED RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Jester Brothers Construction	L05057	Whitewright	02	05/26/05
Throughout Tx	Associated Wireline Services Inc	L00835	Wichita Falls	14	05/26/05
Tomball	Tomball Hospital Authority DBA Tomball Regional Hospital	L02514	Tomball	36	05/26/05
Tyler	Allens Nutech Inc DBA Nutech Inc	L05511	Tyler	07	05/26/05
Waco	Waco Cardiology Associates	L05158	Waco	11	05/26/05
Waco	Waco Radiology Clinic PA	L05324	Waco	04	05/26/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200502378
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 10, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Dimmitt County Memorial Hospital

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Dimmitt County Memorial Hospital (registrant - R01345-000) of Carrizo Springs. A total penalty of \$4,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502377
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 10, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Terry H. Peters, D.C.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Terry H. Peters, D.C. (registrant - R18219-002) of San Antonio. A total penalty of \$4,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502376
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 10, 2005

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Nursing Facility Payment Rates for State Veterans Homes

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 28, 2005, to receive public comment on proposed payment rates for state-owned veterans nursing facilities. These nursing facilities are in the nursing facility program operated by the Texas Department of Aging and Disability Services. The SFY 2005 payment rates are proposed to be effective July 1, 2005, for McAllen and August 1, 2005, for El Paso to correspond with the opening dates of those facilities. The SFY 2006 payment rates are proposed to be effective September 1, 2005, for both areas. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on June 28, 2005, at 9:00

a.m. in the Permian Basin Room of Building H, Braker Center at 11209 Metric Boulevard, Austin, Texas 78758-4021. Written comments regarding the proposed payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Maria Ebenhoeh, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Ms. Ebenhoeh, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Ebenhoeh at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Ebenhoeh, HHSC Rate Analysis, MC H-400, 1100 49th Street, Austin, Texas 78756-3101.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Ebenhoeh, HHSC Rate Analysis, MC H-400, 1100 49th Street, Austin, Texas 78756-3101 by June 23, 2005, so that appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following per day payment rates for the state-owned veterans nursing facilities:

- (1) Effective July 1, 2005: McAllen, \$127.00; and
- (2) Effective August 1, 2005: El Paso, \$127.00.

HHSC proposes the following per day payment rates for the state-owned veterans nursing facilities effective September 1, 2005:

- (1) McAllen, \$133.00; and
- (2) El Paso, \$133.00.

The proposed rates for each nursing facility are based upon the state veterans home semi-private basic daily rate in effect on the first day of the rate period in accordance with 1 TAC §355.111(d). These rates will be reconciled retrospectively based on actual costs in accordance with 1 TAC §355.311(j).

Methodology and justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.511(d).

TRD-200502428

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: June 14, 2005

Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for consulting services for technical assistance (RFP #529-05-0115A). HHSC seeks to procure technical expertise to assist in the strategic development, implementation, and evaluation of a Texas healthy marriage initiative pursuant to this RFP.

HHSC is soliciting for consulting services to ensure that HHSC has the necessary technical expertise to strategically develop, implement, and evaluate a Texas healthy marriage initiative. The successful bidder will serve as a resource for the Commission and will provide guidance for research related to marriage in Texas, provide guidance in the development of capacity to deliver training related to marriage across a wide array of audiences, and have demonstrated expertise in promoting and/or implementing public marriage policy for state government(s).

The RFP is located in full on HHSC's Business Opportunities Page under HHSC Contracting Opportunities link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on June 22, 2005.

The successful contractor will be expected to provide technical assistance necessary in the planning, development, and implementation of effective and efficient programs utilizing major federal grants.

Health and Human Services Commission's Sole Point-Of-Contact For Procurement

Jeff Johnson

Manager, Family and Community Services

Health and Human Services Commission

909 W. 45th Street, Building 2

Austin, Texas 78711-2668

(512)-206-5187

jeff.johnson@hhsc.state.tx.us

All questions regarding the RFP must be sent in writing to the above-referenced contact by 5 p.m. Central Time on July 1, 2005. HHSC will post all written questions received with HHSC's responses on its website on July 6, 2005, or as they become available. All proposals must be received at the above-referenced address on or before 5 p.m. Central Time on July 12, 2005. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200502375

David Brown

Assistant General Counsel

Texas Health and Human Services Commission

Filed: June 10, 2005

Texas Department of Housing and Community Affairs

Notice of Public Hearing

Low-Income Home Energy Assistance Program (LIHEAP) PY 2006

For the fiscal year that begins October 1, 2005, the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of certain programs that assist very low-income Texans with home energy. While in the process of deciding how to use Low-Income Home Energy Assistance Program (LIHEAP) funds, TDHCA now seeks opinions of groups affected by LIHEAP programs as well as opinions of other interested citizens.

As part of the public information, consultation, and public hearing requirements for the Low-Income Home Energy Assistance Program, the Community Affairs Division of the Texas Department of Housing and Community Affairs (TDHCA) will conduct one public hearing (in addition to posting the proposed plan on the TDHCA internet site). As its primary purpose, the hearing solicits comments on the proposed use

and distribution of federal fiscal year (FFY) 2006 funds provided under LIHEAP. LIHEAP provides funding for the Weatherization Assistance Program (WAP) and Comprehensive Energy Assistance Program (CEAP).

The public hearing has been scheduled as follows:

Tuesday, July 19, 2005, 2:00 p.m.

Room #436, TDHCA Headquarters,

507 Sabine St.

Austin, Texas 78701

A representative from TDHCA will explain the planning process and receive comments from interested citizens and affected groups regarding the proposed plan for LIHEAP subrecipients (Intended Use Report). A copy of the Intended Use Report may be obtained after July 5, 2005, through TDHCA's web site, <http://www.tdhca.state.tx.us/ea.htm> or by contacting the Texas Department of Housing and Community Affairs, Community Affairs Division, Energy Assistance Section, P.O. Box 13941, Austin, Texas 78711-3941, or by phone at (512) 475-1435.

Anyone may submit comments on the intended use of funds in written form or oral testimony at the public hearing. TDHCA must receive written comments no later than 5:00 p.m., July 21, 2005. Comments concerning the Intended Use Report may be submitted via the Internet at john.touchet@tdhca.state.tx.us or by fax (512) 475-3935 or through John Touchet at TDHCA using the postal service address provided above. If you have any questions regarding the public hearing process or any of the programs referenced above, please contact TDHCA, Community Affairs Division, Energy Assistance Section.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact John Touchet, (512) 475-1435 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200502374

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 10, 2005



Notice of Public Hearing

Multifamily Housing Revenue Bonds (Plaza at Chase Oaks Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Rasor Elementary, 945 Hedgcoxe, Plano, Texas 75025, at 6:00 p.m. on July 11, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to UHF Chase Oaks Housing, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring,

constructing, equipping and rehabilitating a multifamily senior housing development (the "Development") described as follows: 240-unit multifamily residential senior rental development to be located on the east side of Chase Oaks Boulevard and approximately 0.25 miles north of Legacy Drive, Plano, Collin County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200502442

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 14, 2005



Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by MEMIC INDEMNITY COMPANY, a foreign Fire and/or Casualty company. The home office is in Manchester, NH.

Application to change the name of INDUSTRIAL UNDERWRITERS INSURANCE COMPANY to CARDIF PROPERTY AND CASUALTY INSURANCE COMPANY, a domestic Fire and/or Casualty company. The home office is in Irving, TX.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200502488

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: June 15, 2005



Midwestern State University

Request for Proposals - Outside Counsel

REQUESTOR:

Board of Regents

Midwestern State University

3410 Taft Blvd.

Wichita Falls, TX 76308

STATEMENT OF PURPOSE:

The Board of Regents of Midwestern State University is requesting proposals for the purpose of retaining a firm to act as the university's outside counsel.

INSTRUCTIONS TO PROPOSERS:

1. All proposals must be in a sealed envelope and clearly marked: "Sealed Proposal-Outside Counsel Services." All proposals must be received by 5:00 p.m., Monday, July 18, 2005.
2. Ten (10) copies of the proposal are required and may be mailed to: Midwestern State University, ATTN: Debbie Barrow, Executive Assistant, 3410 Taft Blvd., Wichita Falls, TX 76308 or hand delivered to 3410 Taft Blvd., Room 107, Hardin Administration Building, Wichita Falls, TX by 5:00 p.m., July 18, 2005. Each proposal should indicate the name and phone number of the principal contact for the firm.
3. Questions or comments concerning this request for proposals should be directed to: Dr. Jesse W. Rogers, President, Midwestern State University, 3410 Taft Blvd., Wichita Falls, TX 76308, (940) 397-4211.
4. The Board intends to select a firm at its meeting August 5, 2005. The selected firm will be notified on or about August 19, 2005.
5. The Board shall submit its selection to the Texas State Attorney General for final approval.

TERMS AND CONDITIONS:

1. The Board reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within thirty (30) days after the award of the proposal.
2. The Board reserves the right to request clarification of information submitted and to request additional information of one or more applicants.
3. The Board and staff will perform an evaluation of the selected firm's performance as necessary, and the Board shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least thirty (30) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.
4. Any agreement or contract resulting from acceptance of a proposal shall be on forms either supplied by or approved by the Attorney General. The Board reserves the right to reject any agreement that does not conform to the request for proposals and any Board requirements for agreements and contracts.
5. The selected firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the Board.

ELIGIBLE PROPOSERS

1. The Midwestern State University Board of Regents will only consider proposals from law firms licensed in Texas.
2. Counsel must have prior legal experience with public, non-profit organizations. Experience with state agencies and an interest in education will be viewed favorably in the selection process.
3. Counsel must agree to work closely with the President of the University in matters submitted to Counsel for review.

4. Counsel must agree to attend any and all Board of Regents meetings, which are held no less than quarterly on the campus of Midwestern State University, Wichita Falls, Texas. Counsel's attendance would only be required at the request of the Board and adequate notice would be provided.

5. Counsel must maintain malpractice insurance in an amount of not less \$1,000,000.

SCOPE OF SERVICES:

The selected firm will provide the following services:

1. In all situations where assistance is required by the Office of the Attorney General on litigation or general counsel matters being handled by the Office of the Attorney General, or where the Office of the Attorney General defers the matter to outside counsel.
2. In situations where expertise in school law and policy is required.
3. In situations where prior knowledge or experience with the particular facts or issues in the matter or where other unusual circumstances exist which would facilitate the most timely and economical handling of the matter.
4. In emergency and other situations that require a response time that the Office of the Attorney General cannot reasonably provide.
5. In situations involving personal meetings or conferences where the charges for legal fees and expenses for travel by the Office of the Attorney General would result in a total cost greater than could be obtained by using the outside counsel.

QUALIFICATIONS:

1. Describe how the firm is organized and how its resources will be put to work for MSU.
2. List the firm's most recent three (3) years of experience in higher education, school law, state agency or public, non-profit organizations relationships. State the term of the relations, briefly describe the work performed, and include the names, addresses and phone numbers of contact persons.
3. Affirm that no individual in the firm has represented any client in any matter pending before Midwestern State University during the previous six-month period.

PERSONNEL:

1. Indicate which individuals in the firm would be assigned in a direct, on-going working relationship with the Board and staff and include their resumes. Indicate the role these individuals assumed in the three-year history of higher education, school law, state agency or public, non-profit organizations relationships as described in subsection 2 of the QUALIFICATIONS section.
2. Indicate the availability of individuals described in subsection 1 of this section.
3. Include a description of your firm's Affirmative Action program and include any strides made in the employment of women and minorities.

COMPENSATION:

Explain the firm's proposed hourly fee schedule and the projected annual cost for the scope of services detailed in this RFP. If the firm proposes that the university bear the cost of incidental expenses associated with these services, clearly state what type of incidental expense and estimated costs the university would be expected to bear.

TRD-200502485

Jesse W. Rogers
President
Midwestern State University
Filed: June 15, 2005

Permian Basin Workforce Development Board

Services to Eligible Persons Under the Workforce Investment Act (WIA)

The Permian Basin Workforce Development Board (PBWDB) issues this public notice of its annual strategic and operational Plan Modification. PBWDB is responsible for the implementation of workforce development programs throughout its Board area, which includes the following counties: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, Winkler.

Available to the public is a PBWDB draft of the strategic and operational Plan Modification for the plan year of July 1, 2005 - June 30, 2006. The public comment period will begin Wednesday, June 15, 2005 and will end at noon on Monday, July 18, 2005. The general public may access the document Monday - Friday, 8 a.m. - 5 p.m. at 2911 La Force Blvd., Midland, Texas. Public comments must be submitted in writing attention: Willie Taylor-Plan Modification, PBWDB, P.O. Box 61947, Midland, Texas 79711, or by fax to (432) 561-8785.

The deadline to receive comments is 12 noon on July 18, 2005. All comments will be incorporated as part of the Board's Plan Modification. The Permian Basin Workforce Development Board is an equal opportunity organization.

TRD-200502397
Gail Dickenson
Deputy Director
Permian Basin Workforce Development Board
Filed: June 14, 2005

Public Utility Commission of Texas

Correction of Error

The Public Utility Commission of Texas (PUC) published a Notice of Application for Authority to Surcharge Fuel Under-Recovery in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3169).

In the first and fourth paragraphs on page 3170, the notice cites "Docket Number 30165" in error. The correct cite is "Docket Number 31065".

TRD-200502410

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 6, 2005, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of Retail Power Supply, LP for Retail Electric Provider (REP) Certification, Docket Number 31197 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the geographic area of the Electric Reliability Council of Texas (ERCOT).

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31197.

TRD-200502369
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 9, 2005

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 7, 2005, for retail electric provider (REP) certification pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of 1-800-RECONEX for Retail Electric Provider (REP) certification, Docket Number 31205 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31205.

TRD-200502372
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 10, 2005

Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On June 3, 2005, Intermedia Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60082. Applicant intends to relinquish its certificate.

The Application: Application of Intermedia Communications, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31188.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 29, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31188.

TRD-200502344

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2005

Office of the Secretary of State

Notice of Consultant Contract Award

The Office of the Secretary of State ("SOS"), in accordance with Chapter 2254 of the Texas Government Code, has awarded a consultant contract to Mr. Bob Rasmussen, 7916 FM 1117, Nixon, Texas, for services to the Chairman of the 2005 Base Realignment and Closure Commission ("BRAC"). Effective date of the consultant contract is June 6, 2005, with a preliminary report due to the Chairman of the Strike Force on or before July 11, 2005, and a final comprehensive report due on or before September 7, 2005, the ending date of the contract, subject to extension at the option of SOS. Estimated cost for the initial term of the contract (exclusive of any options to renew) is \$55,000, including reimbursable travel and other related consulting services expenses.

In accordance with Texas Government Code, Chapter 2254, Governor Rick Perry granted a limited waiver to provisions of Chapter 2254 because there is a substantial need for the consulting services to be provided given the short time period for preparing for a July 11, 2005 BRAC Regional Hearing in San Antonio. Further, the SOS cannot adequately perform the services solely with its own internal personnel or obtain the same or similar consulting services through a relationship with any other individual state agency. An emergency exists with respect to the timing of the presentation of the fact-based, objective case to the 2005 BRAC Regional Hearing on July 11, 2005, which prevents the SOS from providing the necessary resources using internal agency staff or through other state agency staff.

Governor Perry issued Executive Order RP-43 to create the Texas BRAC Response Strike Force. The Strike Force is charged with coordinating Texas' efforts to preserve military installations that the Department of Defense has recommended for closure. The Governor appointed Secretary of State Roger Williams as Chairman of the BRAC Strike Force.

The following military installations in Texas have been recommended for closure: Naval Station, Ingleside; Red River Army Depot, Texarkana; Lone Star Ammunition Plant, New Boston; and Brooks City-Base, San Antonio. Estimated economic impact to Texas is \$1 billion.

Mr. Rasmussen is the former Director of Greater Kelly Redevelopment Authority in San Antonio. He participated in the preparation of a Regional Hearing position for Kelly Air Force Base, and has made numerous presentations before BRAC Commissioners. He was instrumental in providing data analysis and factual information as required by the Air Force and Department of Defense. He was named to head the successful Kelly USA initiative, which has redeveloped much of Kelly AFB following its closing during the 1995 BRAC round. Consequently, Mr. Rasmussen is uniquely qualified to work in the field of the provision of BRAC consulting services.

Questions concerning this notice may be directed to Benjamin M. Hanson, Chief of Staff and General Counsel, (512) 463-5770, bhanson@sos.state.tx.us.

TRD-200502445

Benjamin M. Hanson
Chief of Staff and General Counsel
Office of the Secretary of State
Filed: June 15, 2005

Texas A&M University, Board of Regents

Request for Information

The Texas A&M University System (A&M System) requests information from law firms interested in representing the System in bond matters. This RFI is issued for the purpose of establishing (for the biennium beginning September 1, 2005) a referral list from which the A&M System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific bond matters and securities law issues as the need arises. These needs include the usual and necessary services of a bond counsel in connection with issuance, sale and delivery of bonds, notes, and commercial paper.

Description. The A&M System comprises nine universities, seven state agencies and a health science center in Texas. Public bond issuance is conducted under two major programs and is rated by at least two major rating agencies. Bonds are issued under authority granted the System in Article VII, §18 of the Texas Constitution (Permanent University Fund). A flexible rate note program with an authorized limit of \$80 million is frequently used to finance capital improvement needs of the program. Note sales are normally conducted once or twice each year. As of May 31, 2005, \$10 million is issued and outstanding. Current and advance refunding of Permanent University Fund bonds are conducted periodically based on potential savings opportunities. Under authority granted in Chapter 55, Texas Education Code and Chapters 1207 and 1371, Texas Government Code, and other applicable laws, the A&M System also issues revenue bonds for capital improvements. The A&M System employs a revenue bond program, which offers a combined pledge of all legally available revenues with certain exceptions (the Revenue Financing System). A commercial paper program is used for interim financing with long-term bonds sold to provide more permanent financing. The commercial paper program is presently authorized up to \$200 million. As of May 31, 2005, the amount of issued and outstanding commercial paper is \$200 million. A bond issue sold June 2, 2005 and scheduled to close June 30, 2005 will reduce the amount of commercial paper outstanding to approximately \$33 million. Current and advance refunding of bonds and escrow restructures of previously defeased bonds, based on market opportunities, may be expected. Federal tax related matters regarding bonds issued by the A&M System, including strategies and management practices in the conduct of a debt program, requires a close working relationship with bond counsel. Contact is frequent, particularly in regard to the Revenue Financing System program due to the significant level of capital improvements anticipated throughout the System over the next two years. The A&M System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of the A&M System's Office of General Counsel. Once the most qualified candidate(s) is selected, the A&M System will negotiate in good faith to award a contract. If negotiations are unsuccessful, the A&M System will negotiate with another qualified firm to provide bond counsel services.

Responses. Responses to this RFI should include at least the following information: [1] a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in bond issuance matters and securities law issues; [2] the names, experience, and technical expertise of the attorneys who may be assigned to work on such matters; [3] appropriate information regarding efforts

made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and bond matters in particular; [4] disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the A&M System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and [5] confirmation of willingness to comply with policies, directives and guidelines of the A&M System and the Attorney General of the State of Texas.

Format and Person to Contact. Three copies of the response are requested. The response should be typed, preferably double-spaced, on 8-1/2 by 11-inch paper with all pages sequentially numbered, either stapled or bound together. Responses should be sent by mail or delivered in person, marked "Response to Request for Information" and addressed to:

Delmar L. Cain, General Counsel
Office of General Counsel
The Texas A&M University System
200 Technology Way, Suite 2087
College Station, Texas 77845-3424
Telephone (979) 458-6122 for questions

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of The Texas A&M University System at the address set forth above not later than 5:00 p.m., July 15, 2005.

TRD-200502486
Thelma Isenhardt
Assistant Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: June 15, 2005

Texas Department of Transportation

Public Notice - Hidalgo County Regional Mobility Authority

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on the proposed formation of the Hidalgo County Regional Mobility Authority ("Hidalgo County RMA") by Hidalgo County (the "county").

On April 21, 2005, the county filed a revised petition requesting authorization from the Texas Transportation Commission to form the Hidalgo County RMA. As proposed, the Hidalgo County RMA would encompass the boundary of the county, and would be governed by a board of directors of seven members. Six of the board members would be appointed by the Hidalgo County Commissioners Court. In addition to the board members appointed by the county, the presiding officer of the board will be appointed by the Governor. The initial project of the Hidalgo County RMA will be an approximately 9.9 mile project known as the South Truck/Haz-Mat Connector from U.S. 281 to U.S. 83. The project will consist of new right of way for the entire length of the segment.

Pursuant to Title 43, Texas Administrative Code, §26.12, the department will hold a public hearing on the date, time, and location indicated below to receive public comments and assess the level of public support concerning the proposed Hidalgo County RMA:

Wednesday, July 13, 2005, 6:00 p.m.

Hidalgo County Commissioner's Court Room

First Floor, Administration Building

100 E. Cano

Edinburg, Texas 78539

All interested citizens are invited to attend the public hearing and to provide input. Those desiring to make official comments may register starting at 5:30 p.m. Oral and written comments may be presented at the public hearing, or written comments may be submitted by mail. To be included in the official record of the public hearing, written comments must be received by 5:00 p.m. on August 3, 2005. Written comments should be mailed to: Doug Woodall, P.E., Director of Turnpike Planning and Development, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Godfrey Garza, Jr., at (956) 292-7080 at least two business days prior to the hearing, so that appropriate arrangements can be made.

A copy of Hidalgo County's petition to the Texas Transportation Commission is available for inspection at the offices of the Hidalgo County Right of Way Department located at 902 N. Doolittle in the City of Edinburg.

TRD-200502399
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 14, 2005

Texas Water Development Board

Request for Applications for an Inventory of Springs in 71 Texas Counties

The Texas Water Development Board (TWDB or Board) requests the submission of Requests for Applications from interested applicants leading to the possible award of contracts for state Fiscal Years 2006 and 2007 to conduct an inventory of springs in 71 Texas counties. The total amount of the grant awarded by TWDB shall not exceed \$110,000, as administered through the TWDB's Water Assistance Fund from funds provided by the Texas Water Assessment Allocation Program through the U.S. Army Corps of Engineers. Rules governing the funding (31 Texas Administrative Code, Chapter 355) are available upon request from the Board, or may be found at the Secretary of State's Internet address: {<http://www.sos.state.tx.us/tac/>}; then sequentially select, "TAC Viewer," "Title 31," "Part 10," and "Chapter 355." Guidelines for responding to the Request for Applications, which include an application form and detailed information on the research topic, will be available at the TWDB's website at: {http://www.twdb.state.tx.us/publications/requestforproposals/requestsforproposals_index.asp}, or will be provided upon request.

Description of the Research Objectives and Purpose

In 1981, Gunnar Brune published a book titled *Springs of Texas* that is widely recognized as the definitive reference guide on Texas springs. The book includes information on the major and historical springs from 183 of the 254 Texas counties. Information on the springs is useful to regional water planning organizations, allows groundwater management districts to have a greater understanding of the interaction between

surface and groundwater, and improves conceptual models and boundary conditions in groundwater and surface-water availability models.

The purpose of this study is to systematically catalog and describe springs in the remaining 71 counties and complete a database of Texas springs. Most of the 71 counties are located in the Edwards Plateau region west of Austin, the northeast central region of Texas, and some counties in southern Texas. Initial work will involve identification of springs in the 71 counties from information provided by U.S. Geological Survey topographic maps and interviews of local residents. All springs in the TWDB database and those identified from this research will be digitized on the digital versions of U.S. Geological Survey topographic maps (1:24000) and Bureau of Economic Geology Geologic Atlas of Texas maps using ArcView 9.0.

A second phase of field surveys on 800 to 900 significant springs identified during initial research will include verification of spring existence, estimates of current flows and water quality, as well as documentation of the springs' histories, ecological surroundings, and locations. Spring locations will be documented with a Global Positioning System unit and photographed. Documentation of ecological surroundings will include descriptions of wetland and aquatic vegetation and species and surrounding plant communities if applicable. Location, current flow, water quality, and related information in addition to digital photographs and scanned image files of ecological descriptions and spring histories will be made available to the TWDB in the proper electronic format for inclusion in their groundwater database. The final report will include description of the project, methodologies, and a database of spring information.

Description of Applicant Criteria

The applicant should: (1) demonstrate prior experience in the research topic; (2) be able to review, research, analyze, evaluate, and interpret data and research findings; and (3) have excellent oral presentation and writing abilities. If the applicant is short-listed, the applicant should be prepared to make an oral presentation to TWDB staff. The scope of work, schedule, and contract amount will be negotiated after the TWDB selects the most qualified applicant. Failure to reach a negotiated contract may result in subsequent negotiations with the next-most qualified applicant; however, a negotiation will not occur with applicants who are determined by the TWDB to be unqualified or otherwise unsuited to perform the requested research. Applicants selected to conduct the research may be required to present the results of their research at one or more of TWDB's monthly public meetings or a TWDB staff meeting.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information

Historically Underutilized Businesses are encouraged to submit statements of qualifications and/or participate as sub-contractors in the water research program. Ten double-sided, double-spaced copies of a completed Request for Applications must be filed with the Board **prior to 5:00 PM, July 8, 2005**. Respondents to this request shall limit their Applications to the size previously mentioned, excluding the resumes of the project team members. Applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 537, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231--Capitol Station, Austin, Texas 78711-3231. *All applicants must contact the TWDB to obtain TWDB's guidelines for responding to the Request for Applications.* Requests for information and the Board's guidelines for responding to the Request for Applications should be directed to Ms. Phyllis Thomas at the preceding address, by calling (512) 463-3154, or by e-mail to: {phyllis.thomas@twdb.state.tx.us}.

TRD-200502441
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: June 14, 2005



Request for Proposals for the Analysis of Water Quality Samples During FY 2006

The Texas Water Development Board (TWDB) requests the submission of proposals leading to the possible award of contracts to analyze groundwater quality samples for the TWDB's groundwater quality monitoring program. In order to receive the *nomination*, the applicant must meet the qualifications as described below.

Description of Funding Consideration: For state fiscal year 2006, September 1, 2005, through August 31, 2006, funding up to \$384,000 has been initially authorized from General Revenue and from the Drinking Water State Revolving Fund for the analysis of groundwater quality samples submitted by the TWDB and its designated cooperators. In the event that acceptable proposals are not submitted, the TWDB retains the right to not award contract funds.

Deadline, Contact Person for Additional Information, and Review Criteria: Six (6) double-sided copies of a complete proposal may be filed with the TWDB at any time up to the deadline for funding consideration. Upon successful review by the TWDB, recommendations for funding of proposals will be presented to the TWDB's governing board at its earliest meeting possible. TWDB must receive all grant applications by 5:00 p.m., July 8, 2005. Proposals can be directed either in person to Ms. Phyllis Thomas, Room 537, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas, 78711-3231. Applications will be evaluated according to the evaluation criteria below. Requests for information concerning evaluation criteria may be directed to Ms. Phyllis Thomas at the preceding address or by calling Ms. Janie Hopkins at (512) 936-0841.

Contract Period: The successful applicant will be awarded a one (1) year contract effective September 1, 2005 through August 31, 2006.

Option to Renew: This contract may be extended for four (4) additional one (1) year periods, provided all terms and conditions remain in full force and effect except for the contract period being extended. This option, if exercised, is to be executed in the form of a letter of agreement, to be issued no sooner than ninety days (90) prior to expiration of this contract, nor later than the final day of the contract period. This option to renew requires the mutual agreement of both parties. Refusal by either party to exercise this option to extend will cause this contract to expire on the original or mutually-agreed upon date. The total period of this contract, including all extensions as a result of exercising this option, will not exceed a maximum combined period of five (5) years.

Factors of Award: Applications will be evaluated according to Title 31, Texas Administrative Code Chapter 355, Subchapter A, as well as the following criteria:

- (1) Signed and dated application form.
- (2) Responsiveness of proposal.
- (3) Total low cost and best quality for TWDB.
- (4) Certification by the Texas Commission on Environmental Quality for drinking water chemical analysis.

(5) National accreditation/certification by (or in process of obtaining) National Environmental Laboratory Accreditation Conference (NELAC) or American Association for Laboratory Accreditation (A2LA).

(6) Use of U.S. Environmental Protection Agency methodology.

(7) Submission of results from participation in the last two Water Supply (WS) and Water Pollution (WP) Proficiency Tests.

(8) Ability, capacity, and skill to perform the contract or provide the service required.

(9) Experience, including capabilities in the area of services to be provided. If the project is to include subcontractors, all member firms shall be listed accordingly.

(10) History of performance.

(11) Character, responsibility, integrity, and reputation.

(12) Previous and existing compliance with laws relating to the contract or service.

(13) Sufficiency of the applicant's financial resources and ability to perform the contract or provide the service.

(14) Analytical detection and quality control limits.

Experience: Applicant certifies that it has a minimum of five (5) years experience as an analytical laboratory analyzing all of the analytes requested in this proposal.

References: Applicant will include with the proposal the name and addresses of five (5) firms to which it has provided these types of services in the past three (3) years or with which it is under contract for such services presently and the names of company representatives who may be contacted for references and performance history. Applicant must supply credentials of the employee(s) doing the actual services, including but not limited to, the Analyst/Chemist of Record, the Project Manager, and the Sample Custodian. The TWDB may use other references to determine an applicant's performance history. A single negative reference, in the TWDB's sole discretion, will be cause for disqualification of the applicant.

Delivery of Samples: The laboratory must be able to receive the samples in Austin, 7 days a week, 24 hours a day or, if from out of town, must provide its own ice chests and pay for shipping to the place of processing while making sure the sample holding times are not exceeded during transport.

Delivery of Results: Written final analytical reports, chains of custody, and electronic data in comma-quote delimited format must be submitted to the TWDB in TWDB's format within 15 working days of sample receipt for analytes listed in **Attachment 1**. The written final report must include the laboratory identification number, the client identification number, the sample collection date, the analytical results, the methods used, the units of measure, the practical quantitative limits, the date analyzed, the analyst of record, and the STORET code for each analyte.

Estimated Requirements: It is estimated that the TWDB will require analysis of up to 800 samples during a one (1) year period for the analytes listed in **Attachment 1**, up to 100 samples during a one (1) year period for the analytes listed in **Attachment 2**, and up to 200 samples during a one (1) year period for the analytes listed in **Attachment 3**. The price for analytes will apply to any additional quantities for the duration of this contract.

Inspections: Applicant will allow inspection of its laboratory facilities and its analytical processes prior to award of a contract as well as during the term of the contract.

Subcontracting: All constituents listed in **Attachment 1** are to be analyzed by the contractor. Applicant may subcontract analytical services for constituents listed in **Attachment 2** and **Attachment 3** with other laboratories (these laboratories need to be identified in the proposal) and with TWDB approval.

Documentation: Applicant must submit the following information with its proposal or the proposal will be considered non-responsive:

1. References.
2. An example of the chain of custody form to be used.
3. An example of a Final Analytical Report package.
4. An example of the electronic data file format.
5. A copy of the laboratory's Quality Manual.
6. Methodology, quality control limits, detection limits, and price per sample for analytes in this request for proposals.
7. Copies of all accreditations, approvals, and certifications.
8. An archive schedule for samples, data, and final reports.
9. Per sample cost for the collective constituents listed in **Attachment 1** and per sample cost for each of the constituents listed in **Attachment 2** and **Attachment 3**.

Scope: It is the intent of the TWDB to award an annual contract for analytical services for parameters listed in the attachments. All samples must be tested in conformance with U.S. Environmental Protection Agency standards.

Standards: The applicant will perform analytical services on the parameters requested and will complete all analyses according to the procedures set forth in "Standard Methods for the Examination of Water and Wastewater," current edition, or in "Methods for Chemical Analysis of Water and Wastewaters," current edition. If a standard method is not available, the analytical method used must be a method approved in writing by the TWDB's contract manager.

Receptacles and Preservation Acids: The successful proposal will include, at no extra cost to the TWDB, all sample bottles, containers, preservation acids, chains of custody, and shipping services. The laboratory must retain the samples for 30 days after the final analytical report has been submitted to the TWDB in the event that the TWDB requests re-analysis.

Retesting: The TWDB may request that any questionable analytical results be retested. The retest must be performed in compliance with the holding time of the sample whenever possible. The cost of the retest will be absorbed by the laboratory if the retest produces different results, or whenever a cation/anion imbalance of greater than five percent (>5%) occurs. If the results of the retest are the same, the TWDB will pay for the cost of retesting.

Invoicing: Invoices will be summarized and submitted monthly. Each invoice will summarize the number of samples analyzed, the total cost of the samples, and the dates of service.

All potential applicants can contact the TWDB to obtain the rules in Title 31, Texas Administrative Code Chapter 355, Subchapter A and an application instruction sheet. Requests for information, the TWDB's rules and instruction sheet covering the research and planning fund may be directed to Ms. Phyllis Thomas at the preceding mailing address, by email at phyllis.thomas@twdb.state.tx.us, or by calling (512) 463-3154.

ATTACHMENT 1

List of Routine Analytes (to be analyzed with specified methodology or instrument, if applicable) and Cation/Anion Balance

Alkalinity, Total
Alkalinity, Phenol
Bromide
Chloride
Fluoride
Nitrate, nitrite/nitrate, Automated Flow Analysis (AFA)
Silica
Sulfate
Aluminum, dissolved, Inductively Coupled Plasma Mass Spectrometer (ICPMS)
Antimony, dissolved, ICPMS
Arsenic, dissolved, ICPMS
Barium, dissolved, ICPMS
Beryllium, dissolved, ICPMS
Boron, dissolved
Cobalt, dissolved, ICPMS
Copper, dissolved, ICPMS
Iron, dissolved
Lead, dissolved, ICPMS
Lithium, dissolved, ICPMS
Manganese, dissolved, ICPMS
Molybdenum dissolved, ICPMS
Selenium, dissolved, ICPMS
Strontium, dissolved
Thallium, dissolved, ICPMS
Vanadium, dissolved, ICPMS
Zinc, dissolved, ICPMS

Calcium, dissolved
Magnesium, dissolved
Potassium, dissolved
Sodium, dissolved
Cadmium, dissolved, ICPMS
Chromium, dissolved, ICPMS
Cation/Anion Balance

ATTACHMENT 2

List of Radiogenic Analytes

Gross Alpha, total
Gross Beta, total
Uranium 238, total

ATTACHMENT 3

List of Isotopic Analytes

Tritium, helium in-growth method
Carbon-13
Carbon-14, Accelerator Mass Spectrometry Technique (AMS Technique)
Oxygen-18
Deuterium
Sulfur-34
Oxygen on sulfate
TRD-200502440
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: June 14, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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